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I N D E X.

ACCORD AND SATISFACTION.

Where there is no dispute between parties as to the facts, or amount of claim, a receipt of less than full amount does not constitute an accord and satisfaction. *Beardsley v. Davis*, 377.

ACKNOWLEDGMENT. See DEED, 2.

ACTION. See ESTOPPEL, 2; LIMITATIONS, 2; VENDOR AND PURCHASER, 17; WASTE.

1. Will lie against conveyancer for error in judgment, and rule of liability is the same as in the case of lawyers and physicians. *Watson v. Muirhead*, 310.

2. Will not lie to compel one to render an account and to re-convey real estate, which he holds under a conveyance made to defraud creditors. *Sweet v. Tinslar*, 438.

ACTS OF CONGRESS.

1839, Feb. 28. See COURTS, 15.

1845, Feb. 26. See INTERNAL REVENUE.

1850, July 29. See VESSELS, 2.

1852, August 30. See CONSTITUTIONAL LAW, 18.

1855, Feb. 10. See ALIEN, 1.

1855, March 6. See CONSTITUTIONAL LAW, 18.

1861, July 13. See INTERNATIONAL, LAW 12, 17.

1862, — — See CONFEDERATE STATES, 5.

1862, Feb. 25. See LEGAL TENDER NOTES, 2.

1863, March 3. See COURTS, 15.

1864, June 11. See CONGRESS.

1864, June 30. See STAMPS, 6.

1865, Feb. See TAXATION, 2.

1867, Feb. 5. See TAXATION.

1867, March 2. See BANKRUPTCY, 1.

ADMINISTRATOR. See EXECUTOR.

ADMIRALTY. See COMMON CARRIER, 9.

1. A cause of action to be cognisable in admiralty must relate to the business of commerce and navigation. *People v. Steamer America*, 182.

2. A state pilot law, enacting that all vessels *shall* take a pilot, but containing no clause exempting the vessels from liability for the pilot's mismanagement, does not protect a vessel, with a pilot on board, from liability for torts done by it, though such torts are the result of the pilot's negligence. *The China*, 437.

3. State statutes authorizing actions *in rem* against vessels for causes cognisable in admiralty are statutes conferring admiralty jurisdiction, and are therefore unconstitutional. *Jackson v. Steamer Kinnie*, 470.

4. A lien created by a state law against a domestic vessel for supplies furnished in a home port cannot be recognised or enforced in a court of admiralty. *Id.*

ADMIRALTY.

5. Where in case of collision, there is reasonable doubt as to which vessel is to blame, the loss must be sustained by the one on which it has fallen. *The Grace Girdle*, 438.

AFFIDAVIT OF DEFENCE. See PRACTICE, 3.

AGENT. See BAILMENT, 2; BROKER, 1, 3; DAMAGES, 7; STATUTE OF FRAUDS, 5; INSURANCE, 9; INTERNATIONAL LAW, 10; VENDOR AND PURCHASER, 13.

1. A local board of directors, established by a foreign corporation in New York, under regulations of the statute of that state, no matter how complete its organization or how full its authority to transact business without consultation with its principal, is still a mere agency, and not a distinct corporation. *Robinson v. Life Assurance Co.*, 166.

2. Therefore a contract, as of insurance, made by this New York board with the plaintiff, a citizen of Virginia, was the contract of the foreign corporation with plaintiff, and the government of the foreign corporation being a neutral and having recognised the government of the plaintiff as a belligerent, the contract was not suspended by the civil war in America, and payment of premiums to a sub-agent of the corporation, at Richmond, was a valid payment to the corporation. *Id.*

3. A party dealing with an agent for a special purpose must ascertain at his own peril the agent's power. *The National Iron Co. v. Bruner*, 244.

4. An agent with restricted power to sell land at a given price, cannot bind his principal, by representations as to quantity or quality. *Id.*

5. The fact that an instrument is made payable at a bank does not make the bank an agent of payee to receive payment, unless he actually deposits the instrument there, or in some express manner authorizes the bank to act for him. *Ward v. Smith*, 354.

6. When an instrument is lodged with a bank for collection, the bank becomes the agent of the payee or obligee to receive payment. The agency extends no further, and without special authority an agent can only receive payment of the debt due his principal in the legal currency of the country, or in bills which pass as money at their par value by the common consent of the community. *Id.*

7. Authority to receive payment implies authority to receive it in whatever was regarded as money at the time and place of payment. Confederate notes being so regarded and being received in good faith by the agent were a valid medium of payment, as between the plaintiff and the corporation. *Id.*

8. Accepting employment hostile to the interests of his employer, is guilty of breach of contract and may be discharged therefor. *Morrison v. Ogdensburgh & Champlain Railroad*, 382.

AGREEMENT. See ATTORNEY, 1; STATUTE OF FRAUDS, 1-6; INTEREST, 1.

It is not necessary to constitute an agreement that a proposition made by letter should be accepted expressly, it is sufficient if acted upon and complied with. *Beardsley v. Davis*, 377.

ALIEN.

1. The Act of Congress of February 10th 1855, which declares "that any woman, who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen," confers the privileges of citizenship upon women married to citizens of the United States, if they are of the class of persons for whose naturalization the previous Acts of Congress provide. *Kelly v. Owen et al.*, 444.

2. The terms "married" or "who shall be married," in the act, do not refer to the time when the ceremony of marriage is celebrated, but to the state of marriage. *Id.*

3. The citizenship of the husband wherever it exists, confers citizenship on the wife. *Id.*

4. Any woman being a free white person, and an alien friend, married after the approval of the Act of February 10th 1855, to a man who was, at the

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time of such marriage, a naturalized citizen of the United States, becomes, by such marriage, *ipso facto*, herself a citizen of the United States, and capable of inheriting real estate, although she resided in a foreign country at the time of her said marriage, and has continued her actual residence there ever since. *Kane v. McCarthy*, 482.

5. And any alien woman answering the above description, and married before the approval of the said act, to an alien husband, who has been subsequently naturalized, becomes by his naturalization, *ipso facto*, herself a citizen of the United States, and capable of inheriting real estate. *Id.*

6. It is the status of being married to—being the wife of—a citizen, which makes the alien woman a citizen of the United States. *Id.*

AMENDMENT.

To a writ which changes the names of the parties to the action, not allowable. *Lewis v. Locke*, 501.

ARBITRATION.

1. An Act of Congress referring a claim to an officer of one of the executive departments to examine and adjust, is not such an arbitrament and award in the technical sense, as to bind the parties like a submission. *Gordon v. United States*, 244.

2. Hence a subsequent act repealing the one making the reference, impairs no right and is valid. *Id.*

3. A mere submission to arbitration will not be necessarily a discontinuance of a pending suit. *Lary v. Goodeno*, 568.

ARMY. See **MILITARY SERVICE.****ASSIGNMENT.** See **DEBTOR AND CREDITOR**, 7.

The delivery of a promissory note payable to bearer is an assignment of it. *Cox's Executors v. Matthews*, 510.

ASSIGNMENT FOR BENEFIT OF CREDITORS. See **BANKRUPTCY**, 11-14.**ASSUMPSIT.** See **LANDLORD AND TENANT**, 5.

1. Lies to recover plaintiff's share, on an agreement between plaintiff and defendant to sell real estate and divide profits. *Bruce v. Hastings*, 506.

2. A school district may maintain an action for money had and received, against a school committee who have neglected to appropriate money in their hands as directed. *School District No. 7 in Auburn v. Sherburne*, 568.

3. Lies to recover money advanced to a corporation for shares of its capital stock. *Swazey v. Choate Manufacturing Co.*, 569.

4. An action of *assumpsit* may be brought against a city or town to recover a reward offered for the apprehension of a criminal. *Janvrin v. Town of Exeter*, 570.

5. Will not lie to recover money voluntarily paid with full knowledge of the facts. *Lester v. The Mayor*, 695.

6. Where a party who has contracted to purchase an interest in certain oil-wells, transfers his interest to an oil company afterwards incorporated, and the deed is made directly to such company by the vendors, the company may maintain *assumpsit* for the oil received by the vendors, between the date of the contract and the incorporation. *Snow v. Thompson Oil Co.*, 753.

ATTACHMENT. See **PRACTICE**, 2.

1. In Illinois, an attachment on personal property, takes precedence of an unrecorded mortgage. *Green v. Van Buskirk*, 246.

2. An attachment once dismissed loses its priority, even though re-instated by consent of the defendant. *Murphy v. Bruce*, 308.

3. Judgment cannot be rendered against a garnishee, where his contract is to pay the defendant in attachment, in property. *Weil v. Tyler*, 378.

4. An attachment, under which goods have been seized, which is set aside for irregularity, affords no protection to the plaintiffs. *Lyon v. Yates*, 379.

ATTORNEY.

1. An agreement made in the presence of an attorney between his client and a third person, is not a privileged communication. *Carr v. Weld*, 244.
2. An attorney's license is *primâ facie* evidence of his authority, to appear for any one, but if denied he must furnish evidence of his retainer. *Clark v. Willett*, 501.
3. An attorney at law has no authority as such to sell or assign the claim of his client. *Rowland v. Slate and Moyer*, 632.

AWARD. See **ARBITRATION.****BAGGAGE.** See **COMMON CARRIER**, 1, 6.**BAILMENT.**

1. Where a bailee of goods absolutely refuses to deliver them to the owner, on demand; or assumes to be himself the owner; or interposes an unreasonable objection to delivering them; or exhibits bad faith in regard to the transaction; a conversion of the property may be inferred. *Carroll v. Mix*, 59.
2. An agent cannot pledge or mortgage goods, to secure an advance on his own account. *First National Bank of Macon v. Nelson*, 309.
5. Warehousemen and forwarders are responsible for the proper custody and storage of goods in their charge, and are bound to use ordinary care and diligence in their protection. *B. & O. R. R. Co. v. Schumacher*, 699.

BANK. See **AGENT**, 4, 5; **LIMITATIONS**, 4; **STOCK**, 1.

1. A national banking association organized from a state bank and receiving its assets, is liable for its debt. *Thorp v. Wegesfaith*, 62.
2. After a national association had become insolvent, its debtor could not purchase notes for which it was liable, to set-off against his debt. *Id.*
3. A bank cannot avail itself of the neglect of a third person to prevent the recovery by one to whom it has paid out a spurious note. *Burrill v. Watertown Bank and Loan Co.*, 183.
4. A bank having received \$3000, in gold coin of the United States, as a *special deposit*, will be compelled to return to the depositor the amount of coin, in specie, with interest thereon in specie, from the time of demand. *Chesapeake Bank v. Swain*, 754.

BANKRUPTCY.**I. Jurisdiction.**

1. The Bankrupt Act does not absolutely and totally suspend or abrogate state insolvent laws. *Hawkins' Appeal*, 205.
2. A voluntary assignment by a debtor, good at common law and made in the form prescribed by the insolvent law of the state, held valid, although the United States Bankrupt Act was in existence and applicable to the case at the time of the assignment. *Id.*
3. And the proceedings of the probate court in administering upon the insolvent estate so assigned held valid. *Id.*
4. Where there is no conflict of jurisdiction between the officers of the state courts and the Court of Bankruptcy, the latter will not interfere. *Re Davidson*, 236.
5. Discharge refused for want of jurisdiction, where the bankrupt was member of a firm in New Jersey, but had also an office in New York where he received and wrote his letters. *Re Little*, 236.
6. District Court has no power by injunction, to stay proceedings in another court by reason of bankruptcy proceedings pending in another state. *In re Richardson*, 236.
7. The *appellate* jurisdiction, properly so called, of the Circuit Court in bankruptcy matters is limited to controversies between assignees and the claimants of adverse interests, and between assignees and creditor-claimants respecting the allowance of claims. *In re Alexander*, 423.
8. The *supervisory* jurisdiction of the Circuit Court includes all decisions of the District Court, or the district judge at chambers, which cannot be reviewed

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by appeal or writ of error under the appellate jurisdiction given by the 8th section. *In re Alexander*, 423.

9. An appeal must be taken in the time and manner prescribed by the act. The regulations as to appeals are regulations of jurisdiction, and cannot be enlarged or restricted by the Circuit or District Courts. *Id.*

10. The Circuit Court under the 2d section of the Bankrupt Act has jurisdiction to revise the rulings and judgment of the District Court in proceedings in bankruptcy upon bill filed. *Langley v. Perry*, 427.

II. Acts of Bankruptcy. See *post*, 25, 27.

11. Assignment by an insolvent of all his property, for benefit of preferred creditors, is an act of bankruptcy. *Grow v. Ballard*, 237.

12. Suspension of payment of commercial paper for fourteen days, and unexplained, act of bankruptcy. *Re Ballard*, 237.

13. Non-payment of promissory notes at maturity, which are not commercial paper, no ground for adjudication of bankruptcy. *Re Lowenstein*, 237.

14. A general assignment of all a debtor's property for the benefit of his creditors, is not necessarily a conveyance with intent to delay, defraud, or hinder creditors. *Langley v. Perry*, 427.

15. And where such an assignment is made with intent to secure an equal distribution of all the debtor's property among all his creditors, it is not necessarily a conveyance of property with intent to defeat or delay the operation of the Bankrupt Act. *Id.*

16. To make such an assignment an act of bankruptcy, it must be made with intent to delay, defraud, or hinder creditors within the meaning of the statute of 13 Elizabeth, or with intent to defeat or delay the operation of the Bankrupt Act. *Id.*

III. Effect of the Institution of Proceedings.

17. Property of bankrupt after filing petition cannot be taken in execution. *Re Wallace*, 237.

18. Property of bankrupt exempt by state and bankrupt law, though levied on by United States marshal, cannot be sold after filing petition. *Re Griffin*, 237.

19. When attachment is dissolved by commencement of proceedings in bankruptcy, the title of the property vests in assignee. *Re Houseberger*, 237.

20. Vendor's equitable lien upheld by Court of Bankruptcy. *Re Perdue*, 237.

21. Judgment-creditors may issue execution and sell their debtor's property. *Re Ken*, 237.

22. Bankrupts before appointment of assignee cannot be purchasers of the estate. *March v. Heaton*, 238.

23. Feme covert trader may avail herself of her coverture to defeat debts in bankruptcy, unless she has conformed to statutes governing such traders. *Re Slichter*, 238.

24. While adjudication of bankruptcy stands unrevoked, inquiry into validity of petitioning creditor's debt is precluded. *Re Fallon*, 238.

IV. Practice. See *post*, 40, 57, 74.

25. Where A. being indebted to B. and before insolvency, sold the latter an estate, and credited him on his books with the amount of such indebtedness, and after insolvency in a settlement with B. deducted the amount of such indebtedness from the purchase-money: it was held that the payment was really made at the time of sale, that it was a legitimate transaction, and not a fraudulent preference within the meaning of the Bankrupt Act. *Re Isaac Rosenfeld, Jr.*, 44.

26. Where specification charges that a particular debt was paid after the passage of the Bankrupt Act, proof is inadmissible that other debts were paid after the passage of said act, but not the particular debt specified. *Id.*

27. Insurance made upon house and furniture in pursuance of covenants in lease, is not a fraudulent preference. *Id.*

28. Bankrupt not liable to arrest for a claim that would be discharged by an adjudication of bankruptcy. *Re Kimball*, 236.

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29. Original papers referred to in deposition and annexed thereto, cannot be withdrawn from the files. *Re McMair*, 238.

30. Creditor may petition court to be paid a judgment out of funds in hands of assignee. *Re Smith*, 238.

31. Two or more partners may be adjudged bankrupts upon the petition of one or more of them. *Re Crockett*, 238.

32. Omission to publish notice of meeting in one of the papers designated, also failure to state in warrant the names, residences, and amount of debts, sufficient irregularity to set aside proceedings. *Re Hall*, 238.

33. Bankrupt may be called upon at any time to submit to an examination. *Re McBrien*, 238.

34. Order for examination always made on petition for final discharge, by the court; other examinations must be on petition of assignee or creditors. *Re Brandt*, 238-239.

35. Creditor must apply by petition or affidavit for order to examine bankrupt under section 26. *Re Adams*, 239.

36. Each creditor may examine under section 26, but examination regulated by register. *Id.*

37. Bankrupt must answer questions relating to property in which he might have an interest. *Re Bonested*, 239.

V. Discharge.

38. Expenditures incurred by bankrupt while insolvent in support of his family, in the absence of evidence as to their character is no ground for refusal of discharge. *Re Isaac Rosenfeld*, 44.

39. Servants' wages paid after passage of Bankrupt Act, as necessary family expenses, and payments made to counsel for services "rendered and to be rendered," when made without fraud, are no grounds for refusal of discharge. *Id.*

40. Petition to have decision of District Court refusing discharge on account of fraud, reviewed, denied. *Re Robinson*, 236.

41. Must be applied for within one year of adjudication. *Re Willmott*, 239.

42. Under section 29, it is only where bankrupt can apply for his discharge in less than six months, that he must within a year. *Re Greenfield*, 239.

43. Will not be refused for omission of names of creditors from schedule with their consent and knowledge. *Re Needham*, 239.

44. Refused where bankrupt swore falsely that he had no assets. *Re Rathbone*, 239.

45. Creditor secured by deed of trust of land, must proceed according to rule, in opposing discharge. *Re McVey*, 241.

46. The concealment of bankrupt's effects, or a false affidavit to the inventory, must be shown to be intentional in order to preclude discharge. *Re Wyatt*, 239.

47. Refused where the proof of fraudulent concealment of property was not overborne by positive testimony. *Re Goodridge*, 239.

48. Payment of attorney's fees is not such a preference as will prevent discharge of bankrupt. *Re Sidle*, 240.

49. Assignment of a claim, made to secure pre-existing indebtedness and when bankrupt was insolvent, is ground for refusing discharge. *Re Foster*, 240.

50. Payment of one creditor in full by person not contemplating bankruptcy, will not prevent discharge. *Re Locke*, 240.

51. The bare denial of bankrupt, insufficient to show that assignment was not made in contemplation of bankruptcy. *Re Broadhead*, 240.

52. Refused, on failure to keep books of account whether with fraudulent intent or not. *Id.*

53. The intent of non-keeping of books immaterial. *Re Newman*, 240.

54. Vague and general specifications of fraud not allowed in opposition to discharge. *Re Hansen*, 240.

55. Opposition to discharge on the ground of debt being fraudulently created, insufficient. *Re Doody*, 240.

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56. Will not be withheld on the ground that debts were contracted in a fiduciary character. *Re Tracey*, 241.

57. Specifications in opposition to discharge may be filed *nunc pro tunc*, in proper cases. *Re Grefe*, 241.

58. Creditors not having proved their debts may oppose. *Re Boutelle*, 241.

59. A surety on an appeal bond is no longer liable, where the principal is discharged in bankruptcy. *Odell v. Wooten*, 318.

VI. *Property exempted.* See *post*, 61.

60. Under the provision of the 14th section of the Bankrupt Law of 2d March 1867, excepting from the operation of the act the property of debtors exempted from levy and sale by the laws of the state, a vested expectant interest of a bankrupt in a sum of money payable at his own death, or at the death of another person, may, in Pennsylvania, be set apart for the use of the bankrupt; so, however, that its appraised present value, estimated as in cases of life insurance, does not exceed \$300, or that the bankrupt does not receive more than \$300, if the value thus estimated exceeds that amount. *Bennett's Case*, 34.

VII. *Rights and Duties of Assignee.* See *ante*, 19.

61. Real estate cannot be allotted or set apart by the assignee to a bankrupt under section 14 of the Bankrupt Act, even though the personal property, excluding the articles exempted by the state law, be less than the amount which the assignee thinks should be allowed the defendant. *Matter of Thornton*, 42.

62. Money may be so allotted to the bankrupt. *Id.*

63. Judge cannot interfere, where assignee is chosen by the greater part in number and value of creditors. *Re Grant*, 241.

64. Court will not sanction solicitation of votes for assignee. *Re —*, 241.

65. Register can convey estate to assignee where there is no "opposing interest." *In re Wylie*, 241.

66. Property fraudulently disposed of may be recovered by assignee in summary manner. *Neall v. Beckwith*, 241.

67. Cannot recover property from creditor in an action of trover unless fraud in the transfer be shown. *Wadsworth v. Tyler*, 242.

68. A chattel mortgage executed by one co-partner under seal, and assented to by the other by parol, is valid. *Hawkins v. Bank*, 242.

VIII. *Proof of Debts.*

69. A judgment for a fine imposed as a penalty for crime is not a debt within the meaning of the Bankrupt Act, and not being included in the special provisions allowing certain claims to be proved *as debts*, it cannot be proved against the estate of a bankrupt. *Matter of Sutherland*, 39.

70. A creditor of a bankrupt holding a mortgage as security for his debt, must prove his debt, and then apply to court to have security sold. *Re Bittell*, 242.

71. A debt created by fraud is provable. *Re Rundle*, 242.

72. A judgment obtained on breach of promise to marry is a debt provable, and is barred by discharge. *Re Sidell*, 242.

73. Judgment obtained after adjudication of bankruptcy is not provable against estate of bankrupt. *Re Williams*, 242.

74. Action to recover provable debt must be stayed until discharge is determined on. *Re Rosenberg*, 242.

IX. *Distribution.*

75. A state court cannot interfere with the distribution of bankrupt's assets. *Re Bridgman*, 243.

76. The obligee of a joint and several bond of members of a co-partnership, is entitled to dividends out of the assets of the individual bankrupt members of the firm. *Re Bigelow*, 243.

X. *Register.* See *ante*, 65.

77. Must certify conformity or non-conformity on presentation to him by bankrupt, of oath required by section 29. *Re Pulver*, 241.

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78. May fill up blank, issue summons, &c., and proceed the same as the judge when there is no controversy. *Re Brandt*, 243.

79. Has power to order the payment of fees and expenses out of funds in the hands of assignee. *Re Lane*, 243.

80. Must exercise proper legal discretion to prevent unnecessary and unreasonable delays. *Re Hyman*, 243.

XI. *Costs*.

81. Compensation of counsel for petitioning creditors in involuntary bankruptcy, is taxable as part of the costs of the proceedings, and payable out of the fund realized. *Matter of O'Hara*, 113.

82. But the principle does not extend to give petitioning creditors a right to contribution from the other creditors in case of failure to realize a sufficient fund to pay expenses and counsel fees. *Id.*

83. Bankrupt summoned by creditor as a witness is not entitled to witness fees. *Re McNair*, 243.

84. Party for whom services are performed by the officers of the court, must pay the fees incident to such services. *Re Mealy*, 243.

85. Travel by United States marshal as messenger to make return, is necessary, and five cents a mile is proper charge therefor. *Re Talbot*, 243.

86. Charge of ten cents per folio for preparing notices is not proper. *Id.*

87. An item for attendance is improper charge. *Id.*

BILLS AND NOTES. See ASSIGNMENT; CHECK, 1; EVIDENCE, 13; EXECUTION, 7; INTERNATIONAL LAW, 8; STAMPS, 2-4-6; SURETY, 4.

I. *Rights and Liabilities of Parties*.

1. The law of the place, where note stipulating for payment of interest is made, will govern as to rate and rule of casting interest thereon. *Chase v. Dow*, 59.

2. A note payable on demand, and negotiated ten months after it was executed, is subject to the equities of the original parties, in the hands of an innocent holder. *Morey v. Wakefield*, 510.

3. A note due one day after date, with an agreement in writing that the obligees in the note shall have five years to pay it in, cannot be sued on until the expiration of the time, and the Statute of Limitations will not begin to run until then. *Round v. Donnell*, 575.

4. Guaranty of a note, not distinguishable from a general letter of credit, and suit may be maintained in name of person given credit on its faith. *Northumberland Bk. v. Eyer*, 630.

5. A guaranty is not assignable so as to enable the assignee to sue on it in his own name. *Id.*

6. B. made a note payable to J. S. endorsed it: afterwards J. endorsed, it and it was discounted by a bank for J. *Held*, that S. was not liable either to the bank or to J. without evidence *dehors* that he had assumed the liability. *Schafer v. Farmers' & Mechanics' Bank*, 684.

7. The mere endorsement in such case did not authorize the holder to write a guaranty over it, but a special original agreement might be established by proof. *Id.*

8. The payee, who was also an endorser, was incompetent to testify to such a special agreement of the irregular endorser. *Id.*

9. The endorsement is not a note in writing, as required by the Act of April 26th 1855 (Frauds). *Id.*

10. The proof of a collateral liability for the debt of the maker different from that which the endorsement imports cannot be made by parol. *Id.*

II. *Demand and Notice*.

11. Any act of endorser tending to put holder of note off his guard, is in law a waiver of demand and notice. *Sheldon v. Horton*, 575.

12. Notice of dishonour left at post office where there is daily delivery sufficient. *Shoemaker v. Mechanics' Bank*, 693.

BOND. See PARTNERSHIP, 4; STAMPS, 5.

Recovery on bond assigned as collateral security, for amount less than face

BOND.

of bond does not satisfy and extinguish the bond as against the obligee. *Brumagin v. Chew*, 125.

BOUNTY. See PARENT AND CHILD, 2.

1. The right of a person who has enlisted, on a promise to be paid such bounty as a town may vote, cannot be defeated by a subsequent vote to rescind. *Haven v. Town of Ludlow*, 502.

2. A commissioned officer is not entitled to bounty. *Hilliard v. Stewartstown*, 569.

BRIDGE. See NEGLIGENCE, 1-2.**BROKER.**

1. An agent employed to sell goods on commission is a mere broker, and as such is authorized to make contracts for the sale and delivery, but cannot make them in his own name nor receive payment therefor. *Dunn v. Wright*, 59.

2. Can sign contract of sale. *Pringle v. Spaulding*, 569.

3. Where an agent is interested as for commissions as a factor or broker, and a contract is made in his name, he may maintain an action on it in his own name. *Telegraph Co. v. Gildersleve*, 692.

4. Where a broker sent by telegraph, in his name, an order for the purchase of gold on behalf of his principal, which was never transmitted, he may sue in his own name and recover the full amount of damages resulting from the breach of contract. *Id.*

5. Is only entitled to commissions when the purchase is completed as agreed on. *Kimberly v. Henderson*, 754.

CASES APPROVED, OVERRULED, &c.

Olmstead v. Camp, 33 Conn. R. 532, confirmed. *Todd v. Austin*, 9.

Flowers v. Todd, 6 Hill 340, questioned. *Burrill v. Watertown Bank*, 183.

De Groot v. United States, 5 Wall. 432, affirmed. *Gordon v. United States*, 244.

Taylor v. McCune, 1 Jones 460, remarked on. *Schafer v. F. & M. Bank*, 684.

Keyner v. Shower, 1 Harris 446, commented on. *Schafer v. F. & M. Bank*, 684.

Commonwealth v. Shelby, 13 S. & R. 354, explained. *Okeson's Appeal*, 703.

English v. Harvey, 2 Rawle 309, explained. *Okeson's Appeal*, 703.

Leese v. Clarke, 29 Cal. 672, commented on. *Mayne v. Jones*, 120.

Ryan v. Pennsylvania Railroad Co. 11 Harris 384, remarked on. *O'Donnell v. Allegheny R. R.*, 757.

CANAL. See VENDOR AND PURCHASER, 4.**CANAL-BOAT.** See MORTGAGE, 3.**CHECK.** See PAYMENT, 2.

1. Received in payment of a draft, if not paid, will not make the draft invalid as an obligation. *Kelty v. National Bank of Erie*, 438.

2. Is subject to the same rule as draft, as to time of presentment. *Id.*

CHARITABLE USES. See WILL, 2.

The object of the statute of charitable uses in England was not to restrain gifts to such uses, but to enforce and make valid such gifts in certain cases in which they had before been held void because the object was too vague and indefinite. *Norris et al. v. Thompson's Ex'rs. et al.*, 244.

CHURCH. See EASEMENT, 1-3.**CITIZEN.** See INTERNATIONAL LAW, 11; NUISANCE, 1.**COIN.** See LEGAL TENDER NOTES, 2-3; BANK, 4.

1. Gold paid into Court, on a conditional verdict in ejectment, prior to the

COIN.

Legal Tender Law, cannot be recovered in an action of trover subsequently to the passage of the Law. *Aurentz v. Porter*, 61.

2. The clause in the Act of Congress of February 25th 1862, and two subsequent acts, making notes of United States a legal tender for debts, has no reference to taxes imposed by state authority. *Lane County v. Oregon*, 251.

3. A contract to pay in gold and silver coin is a contract to deliver a certain weight of gold and silver. *Butler v. Horwitz*, 443.

4. Where it appears to be the clear intent of a contract that payment is to be made in gold or silver, damages should be assessed in coin, and judgment entered accordingly. *Id.*

5. Whether the Legal Tender Acts of Congress be constitutional or otherwise, a contract which provides for payment in coin, may be enforced in conformity with its stipulations, and judgment may be rendered for the amount in coin, and the same enforced by execution, on which coin only shall be collected. *Chesapeake Bank v. Swain*, 754.

COMMON CARRIER. See RAILROAD, 10.

1. The responsibility of an express company is the same as that of a carrier, and it cannot exempt itself from liability for loss from negligence, by an exception in a receipt. *Belger v. Dinsmore*, 185.

2. The owners of a steamboat, employed in towing boats for hire, are not common carriers and hence not insurers. *Wooden v. Austin*, 189.

3. Parties undertaking to tow a boat from one place to another are bound to do so, unless prevented by causes to which at least gross negligence on their part does not contribute. *Id.*

4. Will not be liable for breach of contract to tow a vessel, where he was prevented by the freezing of the river, that being an act of God. *Worth v. Edmonds*, 308.

5. One transportation company, receiving freight from another, is entitled to the benefit of all stipulations affecting its liability made by the latter with the owner. *Manhattan Oil Co. v. Camden and Amboy Railroad*, 309.

6. The holder of a railway passenger ticket is only entitled to passage with such personal baggage as he carries with him at the time. Baggage sent by an after train will be at his risk, and not that of the company. *Wilson v. Railway Co.*, 398.

7. Of passengers is bound to exercise the very highest degree of care and diligence, and liable for the smallest negligence. *Taylor v. Grand Trunk Railway*, 575.

8. Where goods were delivered to one company in a connected line of transportation, dividing the freight according to their respective services, and were described in the bill of lading, as received by the company to whom delivered and to be transported throughout the line, that company was held responsible for any damage occurring upon any portion of the line, on the ground of an implied contract to deliver safely at the end of the route. *Morse v. Brainerd*, 604.

9. A steamboat towing three loaded barges down the Mississippi river, in approaching bridge piers too closely to back or stop, the tow is driven against a pier by a sudden and unanticipated gust of wind: the carrier is not liable for loss or injury of the cargo of one of the barges. *Insurance Co. v. Steamboat Lady Pike*, 614.

CARRIERS BY WATER, 641.

CONFEDERATE STATES. See FRAUD, 4; INTERNATIONAL LAW, 5.

1. A purchaser at a judicial sale under the judgment of the state court who has paid only in Confederate notes cannot be regarded as a *bonâ fide* purchaser who has paid. *Cuyler v. Ferrill*, 100.

2. A contract, the consideration of which was Confederate treasury notes, made by citizens residing within the lines of the so-called Confederacy, is legal and valid. *Miller v. Gould*, 310.

3. The so-called Confederate Government was not in the proper legal sense a *de facto* government during the late rebellion. *Chisholm v. Coleman*, 693.

4. A judge of the Circuit Court of Alabama, who entered the service of the

CONFEDERATE STATES.

Confederate States, forfeited and vacated his office of judge under the state. *Chisholm v. Coleman*, 693.

5. The Act of Congress of 1862, ch. 195, does not prevent a party who was in the Confederate army from acquiring property after the close of the war. *Thomas v. Hunter*, 699.

6. The Confederate States, though not a *de facto* government in the highest sense of that term, were a government of paramount force having actual supremacy within certain territorial limits, and therefore a *de facto* government in such a sense as made civil obedience to their authority the duty of the inhabitants of the territory under their control. *Thorington v. Smith*, 739.

7. Confederate notes as contracts in themselves are nullities, but they must be regarded as a currency imposed on the citizens of the insurrectionary states by irresistible force, and therefore contracts for payment in such currency, made between citizens of the Confederacy in the ordinary course of civil business and without direct intent to assist the insurrection, are valid, and will be enforced by the courts of the United States. *Id.*

CONFLICT OF LAWS.

Debt contracted in foreign country is payable there, and in the legal currency of such country. *Benners v. Clemens*, 630.

CONGRESS.

A lawyer who is a candidate for Congress, but has no certificate of election, receiving compensation for professional services before a department, between the time of his election and taking his seat, is not within the Act of June 11th 1864. *Bowman v. Coffroth*, 755.

CONSTITUTIONAL LAW.

I. *Power of the Executive.*

THE PRESIDENT'S POWER OF GENERAL AMNESTY, 513, 577.

II. *Power of Legislature.* See VESSEL, 2; WITNESS, 2.

1. The Act of the Legislature of Connecticut of 1864, called the Flowage Act, is not unconstitutional. *Todd v. Austin*, 9.

2. It is no objection to proceedings under the Flowage Act, that the mill is not on the same tract of land upon which the dam is sought to be erected. *Id.*

3. The act entitled "An act making the county treasurer of San Joaquin county *ex officio* tax collector," passed April 2d 1866, was not designed to fill a vacancy in the office of tax collector, but it was to make the treasurer, instead of the sheriff, of San Joaquin county tax collector. In so far as the act provides for the transfer of said office to take place before an election of such treasurer occurs, it is unconstitutional and void. *People v. Kelsey*, 119.

4. The legislature has the constitutional power by enactment to divest an officer of an *ex officio* office to which he had been elected and duly qualified, by a repeal of the law under which he became invested therewith, provided, where such office be created under the Constitution, such repeal does not in effect abolish such office. *Id.*

5. In such case, however, this power does not extend to the transfer of an *ex officio* office which, under the Constitution, is required to be filled by election, to the incumbent of another office who has not been elected to such *ex officio* office. *Id.*

6. The constitutional right of the citizens of one state to sue the citizens of another in the Federal Courts, cannot be defeated by statutory limitation. *Cowles v. Mercer*, 247.

7. The Act of July 3d 1863, of the legislature of New Hampshire, so far as it deprives the owner of a dog of a trial by jury, is unconstitutional. *East Kingston v. Towle*, 569.

8. Land taken by the public for a highway and paid for, cannot be donated to former owner without any consideration. *People v. Commissioners of Highways of Palatine*, 630.

9. A right conferred by the Constitution is beyond legislative interference. *McCafferty v. Guyer*, 694.

10. The Act of June 11th 1866 (for disfranchising deserters) is unconstitutional. *Id.*

CONSTITUTIONAL LAW.

III. *Judicial Power.*

11. Where a person was regularly indicted, convicted, and sentenced under proceedings in a court of competent jurisdiction, the fact that the judge who presided at the trial and passed sentence was within the class prohibited from holding office by the Fourteenth Amendment to the Constitution of the United States, does not make the sentence a nullity nor entitle the prisoner to a discharge on *habeas corpus*. *Ex parte Griffin*, 358.

12. The third section of the fourteenth amendment did not by its own direct and immediate effect, remove from office persons lawfully appointed or elected before its passage, though they may have been ineligible to hold such office under the prohibition of the amendment. Legislation by Congress was necessary to give effect to the prohibition by providing for removal. *Id.*

13. The exercise of their official functions by these officers until removed in pursuance of such legislation is lawful and valid. *Id.*

14. The government of Virginia formed at Wheeling by the loyal citizens of the state after the passage of the ordinance of secession by the convention at Richmond, having been recognised by the executive and legislative departments of the national government, must be treated by the courts of the United States as the lawful government of the state. *Id.*

15. The Supreme Court of the United States cannot acquire jurisdiction of a cause through an order of a circuit court. *The Alicia*, 446.

IV. *Regulation of Commerce.*

16. The term "commerce," as employed in section 8, art. 1, of the Constitution of the United States, is not limited to an exchange of commodities only, but includes the transportation of passengers. *People v. Raymond*, 118.

17. When the Congress, in the exercise of its constitutional right, has by its legislation established regulations of commerce with foreign nations, and among the several states, its authority is paramount and exclusive, and its enactments supersede all state legislation on those subjects. *Id.*

18. By the enactment of section 285 of the United States Internal Revenue Act, 2 Bright. Dig. 271, the Act of August 30th 1852, and the Act of March 6th 1855, 10 U. S. Stat. at Large 61, 715, Congress has undertaken to regulate the entire business of transporting passengers by sea. *Id.*

19. The act entitled "an act to provide revenue for the support of the government of the state of California, from a tax upon foreign and inland bills, passengers, insurances, and other matters, passed May 14th 1862, is a regulation of commerce within the meaning of section 8, Art I. of the Federal Constitution, and therefore unconstitutional and void. *Id.*

V. *Obligation of Contracts.*

20. Alterations may be made in remedies, if they do not deprive a creditor of rights he had when the contract was made. *Penrose v. Erie Canal Co.*, 59.

VI. *Taking Private Property.*

21. The provision of the state constitution of Connecticut, that private property shall not be taken for public use without just compensation, is not a grant of power to the legislature, but a restriction upon the right of eminent domain. *Todd v. Austin*, 9.

22. The legislature may lawfully grant rights of easement to individuals or corporations, to enable them to erect and operate structures, the result of which will be beneficial to the public. *Id.*

CONTRACT. See COIN, 3-4, 5; COMMON CARRIER, 4; CONFEDERATE STATES, 2; STATUTE OF FRAUDS, 3.

1. The rule of comity adopts the law of the country where the contract is made, in determining its nature, construction, and validity, unless such construction is *contra bonos mores*, or against some positive law of the place where the contract is sought to be enforced. *B. & O. Railroad Co. v. Glenn*, 247.

2. No right can be derived under any contract made in express opposition to the laws of the place in which such contract is made. *Id.*

3. A simple request to do an act, will not constitute a contract which is binding. *Wells v. Mann*, 378.

CONTRACT.

4. A court will not set aside a contract for inadequacy of consideration alone. *Kidder v. Chamberlin*, 502.
5. In restraint of trade in particular locality is valid. *McClurg's Appeal*, 630.
6. A contract to pay dollars made between citizens of any state maintaining its constitutional relations with the National Government, is a contract to pay lawful money of the United States, and cannot be modified or explained by parol evidence. *Thorington v. Smith*, 739.
7. But the word dollars if used in a contract between citizens of a foreign state could be shown by parol evidence to mean dollars of a different kind from United States dollars, and the same rule must apply to a contract between citizens of the Confederate States. *Id.*
8. A party entitled to be paid in Confederate notes, can only recover their actual value at the time and place of the contract in lawful money of the United States. *Id.*

CONTRIBUTION.

THE LAW OF CONTRIBUTION, 449.

COPYRIGHT.

1. The term "dramatic composition" in the copyright acts includes all manner of compositions in which the story is represented by dialogue or action instead of narrative, and a scene or composition in which the author's ideas are conveyed by action alone, is within the term. *Daly v. Palmer*, 286.
2. Stage directions, and the order of representation of events in accordance therewith, are the subject of copyright. *Id.*
3. A dramatic scene or incident in which the ideas are expressed by action alone, or by action and dialogue combined, is within the acts. *Id.*
4. Where two dramatic scenes are substantially alike, and the charge of plagiarism is made in a bill by the author of one to restrain infringement of copyright, and not denied by defendant's answer, the validity of the copyright is not impaired by showing that the incidents of which the scene was composed were all known and in common use before the complainant's play was composed, and that a story had been previously published in which the incidents had been related in similar order. *Id.*
5. The representation of a part of a play is an infringement of copyright. *Id.*
6. The sale, with a view to public representation, of a play which infringes the copyright of another, makes the seller a participant in causing the play to be publicly represented, and an injunction will be granted against the sale. *Id.*

CORPORATION. See AGENT, 1.

1. The judgment of another state decreeing the dissolution of a corporation, will not prevent an action in this state begun prior to such dissolution from proceeding to judgment. *Hunt v. Columbian Ins., Co.*, 183.
2. The directors of a corporation are its chosen representatives and constitute the corporation, to all purposes of dealing with others. *Maynard v. Fireman's Fund Ins. Co.*, 186.
3. A corporation has the capacity to compose and publish a libel, and is liable to an action for damages therefor. *Id.*
4. Has no legal existence out of the boundaries of the sovereignty which created it, and unlike natural persons cannot change its domicile. *B. & O. Railroad Co. v. Glenn*, 247.
5. A deed, made by a corporation created by the laws of Virginia, must be determined by the laws of Virginia. *Id.*
6. In a suit to recover a dividend, declared "payable in dollars," evidence is inadmissible that the corporation received its earnings in property other than money. *Scott v. The Central Railroad & Banking Co. of Georgia*, 310.
7. Insolvency does not extinguish the legal existence of a corporation. *Parsons v. Eureka Powder Works*, 439.
8. An act of the legislature of California making each stockholder of a cor-

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poration liable for his share of all its debts contracted while he is a stockholder, is sufficient to answer the requirements of the Constitution. *Larabee v. Baldwin*, 503.

9. Insolvency and suspension of business being admitted, in answer to a bill praying for dissolution of corporation, no excuse is admissible for the forfeiture. *People v. Northern Railroad*, 631.

10. A corporation chartered to carry on a specified business in a city, is not exempt from liability to municipal regulations. *Frankford Passenger Railway v. Philadelphia*, 631.

11. A corporation chartered by one state, and accepting a charter from another, does not throw off its original obligation, nor shelter itself from any violation of duty to the first state. *Commonwealth of Penna. v. Pittsburgh and Connellsville Railroad*, 631.

12. Acceptance of second charter no ground of forfeiture of first. *Id.*

13. The Maryland Hospital has no power under its charter, to make a contract for the support of a lunatic, during life, in consideration of a certain sum of money. *Hospital v. Foreman*, 755.

14. Money paid on such a contract may be recovered back, less the cost of keeping the patient. *Id.*

COSTS. See BANKRUPTCY, XI.

COUPONS. See INTEREST, 3.

COURTS. See CONFEDERATE STATES, 1; CONSTITUTIONAL LAW, 15; INTERNATIONAL LAW, 1.

THE ENGLISH JUDICIAL SYSTEM, 65.

1. A state court of Georgia, during the late war, had no jurisdiction to decree partition of lands in that state while one of the joint owners was a citizen and resident in one of the other states adhering to the Union. *Cuyler v. Ferrill*, 100.

2. The United States courts, therefore, will take cognisance of a bill for partition of such lands and disregard the previous judgment. *Id.*

3. It is not essential that the jurisdiction of a superior court should affirmatively appear in the judgment roll; if it does not, and the contrary does not therein affirmatively appear, jurisdiction will be conclusively presumed. *Hahn v. Kelley & Morse*, 122.

4. Where the judgment recites the fact that the defendant has been duly served with process, it is a direct adjudication by the court upon the point, and is as conclusive on the parties as any other fact decided in the cause, provided it does not affirmatively appear from other portions of the record, consisting of the judgment-roll, that the recital is untrue. *Id.*

5. After a state court has made an order under the Act of Congress for the removal of a cause to a United States court, any further proceedings in the state court or in any other state court by appeal or other process, are void. *Akerly v. Vilas*, 229.

6. A state court making an order for the removal of a cause to a United States court, has no jurisdiction to allow an appeal from such order and to enjoin its clerk from certifying the record pending the appeal. *Id.*

7. Where the clerk refuses under such an order to certify the record to the United States court, the latter will, on motion, allow the record and proceedings to be supplied by copies or affidavits, and the cause to proceed as if the record had been duly certified. *Id.*

8. Where a court has given judgment which has been reversed by the Supreme Court of the state, and judgment entered in effect ordering a *venire de novo*, the cause has not reached final hearing or trial, and a motion to remove to a United States court is in time. *Id.*

9. Where special powers are given by statute to a court, all the requisites of the statute must be strictly complied with to render the proceedings valid. *Cockey v. Cole*, 248.

10. THE JUDICIAL SYSTEM OF SCOTLAND, 257.

11. The judgment of the Criminal Court of Baltimore on an appeal from the

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commissioners for opening streets is final and conclusive. *Rundle v. Baltimore*, 313.

12. In legal contemplation the jurisdiction of the courts of Pennsylvania is foreign to the jurisdiction of those of Maryland. *Seevers v. Clement*, 314.

13. At the common law the rule is well established, that the pendency of a prior suit *in personam* in a foreign court, between the same parties, for the same cause of action, is no sufficient cause for stay or bar of a suit instituted in one of our own courts. It is only the definitive judgment on the merits that will be considered conclusive. *Id.*

14. FORENSIC AND LEGISLATIVE DEBATE IN AMERICA AS COMPARED WITH ENGLAND AND FRANCE, 385.

15. The Act of February 28th 1839 providing for the transfer of cases from one circuit court to another is not repealed by the Act of March 3d 1863. *Supervisors v. Rogers*, 439.

16. A county court has the power within certain limits, to revise its judgments. *Smith v. Howard*, 507.

17. An order of an inferior state court under the Act of Congress for the removal of a cause to a United States court, is reviewable by the Supreme Court of the state, and an appeal to such Supreme Court suspends the vesting of jurisdiction of the case in the United States court until the determination of the appeal. *Akerly v. Vilas*, 558.

18. The Act of Congress provides for the removal of a cause *before trial* if an action at law, or *before final hearing* if a suit in equity, and after a judgment in the inferior court it is too late to remove the cause, although the judgment may be reversed by the Supreme Court of the state, and a new trial or hearing ordered. *Id.*

19. A state court has no jurisdiction to grant a mandamus, to compel a judge of a district court, to try an action which has been transferred to the Circuit Court of the United States. *Francisco v. Manhattan Ins. Co.*, 698.

20. THE JUDICIAL SYSTEM OF FRANCE, 705.

COVENANT. See LANDLORD AND TENANT, 11 ; VENDOR AND PURCHASER, 19 ; WARRANTY.

CRIMINAL LAW. See EVIDENCE, 6 ; WITNESS, 2.

I. *In general.*

1. The statement of a prisoner accused of robbery, that he buried the money in a certain place, admissible in evidence against him, though not voluntarily made. *People v. Hoy*, 183.

2. Where the jury return a verdict of guilty of "involuntary manslaughter," a motion in arrest of judgment on the ground of there being two grades of "involuntary manslaughter," should be sustained. *Thomas v. State*, 310.

3. Where a statute authorizes but does not compel a party indicted to become a witness in his own behalf, it is improper for the prosecution to comment to the jury on the prisoner's refusal to offer himself as a witness, and the court should when requested charge that no inference was to be drawn against the prisoner from his refusal. *People v. Tyler*, 430.

4. An accomplice who has given testimony criminating himself as well as his co-defendant, on whose trial he testifies, cannot refuse to answer fully on cross-examination concerning the entire transaction of which he has undertaken to give an account, and in which he had shown himself guilty. *Foster v. People*, 494.

5. No consequences follow a conviction of felony, except such as are declared by statute. *Estate of Nerac*, 506.

6. It is sufficient if the words used by the defendant, are set out in an indictment for false pretences. *State v. Call*, 570.

7. Maliciously disturbing a meeting of school directors is indictable at common law. *Campbell v. Commonwealth*, 736.

II. *Burglary.*

8. On the trial of an indictment for burglary, parol proof of possession of the premises under a written lease is sufficient. *Houston v. State*, 311.

CRIMINAL LAW.

9. Where the defendant was acquitted of an assault with intent to murder, and afterwards indicted for the same act, under the charge of an assault of an "aggravated nature," the plea of *autrefois acquit*, held good. *Holt v. State*, 311.

III. *Gambling*.

10. Evidence that defendant was at a card table, with a faro box and cards in his hands, warrants a conviction for gambling. *Missouri v. Andrews*, 379.

CURTESY. See HUSBAND AND WIFE, II.

DAM. See CONSTITUTIONAL LAW, 2.

DAMAGES. See TRESPASS, 7-8.

1. A verdict for substantial damages, for barring a minister out of his church on a Sunday, should not be disturbed. *Lynd v. Menzies*, 94.

2. In an action for causing wrongful death, funeral expenses are not recoverable as damages. *Gay v. Winter*, 183.

3. The measure of damages in an action for diverting a stream, is the depreciation in the value of plaintiff's premises. *Easterbrook v. Erie Railroad Co.*, 188.

4. The damages ordinarily recoverable for breach of contract, are those necessarily following the breach. *Coal Co. v. Foster*, 368.

5. The failure of an engine builder to furnish at a fixed time, according to contract, to a coal company a suitable engine for transporting their coal, entitles them to damages for their expenses in such transportation, with the means they had, or the best they could procure during the period of delay, beyond what they would have incurred with the engine. *Id.*

6. But they cannot claim also for the profits in the transportation by engine of the extra quantity of coal they might have transported by it in the same period. *Id.*

7. The value of the property destroyed, is the measure of damages in an action against an agent for not procuring full insurance. *Beardesley v. Davis*, 379.

8. Exemplary are only to be given in case of fraud, malice, gross negligence, or oppression. *Cram v. Hadley*, 439.

9. For breach of contract to make lumber, is the difference between the cost of making and contract price. *Hale v. Trout*, 503.

10. Rule for, on breach of contract to sell real estate, is the difference between contract price and the value of the premises. *Pringle v. Spaulding*, 570.

DEBT. See CONFLICT OF LAWS.

DEBTOR AND CREDITOR. See DECEDENT'S ESTATE, 1; EQUITY, 1, FRAUD, 5; INTERNATIONAL LAW, 10.

I. *Sale or Conveyance fraudulent as to Creditors*.

1. A conveyance made in consideration of the grantees assuming the mortgages on the property, void as to creditors, to the extent of the value of the property above the mortgages. *Meud v. Combs*, 120.

2. A judgment-creditor purchasing at sheriff's sale, under his judgment, is entitled to have a mortgage upon the property, given by the defendant in execution in embarrassed circumstances, set aside and declared void. *King v. Storey*, 120.

3. By the Act of March 7th 1850 to prevent fraudulent trusts and assignments, a creditor upon a return of an execution *nulla bona*, has a lien upon the choses in action of his debtor. *Green v. Tantum*, 120.

4. The sale of a railroad with its franchises and rolling-stock, under a decree of foreclosure, for a price far below its value, will be set aside as a fraud on creditors. *Drury v. Cross*, 248.

5. Subsequent creditors of a grantor cannot attack a conveyance valid when made. *Baker v. Gelman*, 311.

6. A creditor who trusts his debtor after being informed that the latter has conveyed away his property, cannot impeach such conveyance as fraudulent. *Id.*

DEBTOR AND CREDITOR.

7. A creditor who attaches and sells his debtor's goods, cannot prove his claim under an assignment. *Valentine v. Decker*, 378.

8. To render a sale void as to creditors, the vendee as well as the vendor must participate in the intent to delay. *Leach v. Francis*, 504.

II. *Insolvency of Debtor.*

9. State insolvent laws have no extra-territorial operation: and a creditor cannot be compelled by a state of which he is not a citizen or resident to become a party to insolvent proceedings therein; and such proceedings cannot discharge a debt due to a non-resident creditor, unless he voluntarily submits to the jurisdiction by becoming a party to the proceedings, or claiming a dividend thereunder. *Hawley v. Hunt*, 546.

10. A non-resident and non-assenting creditor is not bound by a debtor's discharge under state insolvent laws, no matter where the debt originated, or is made payable: *citizenship* of the parties governs, and not the *place* where the contract was made or where it is to be performed. *Id.*

11. The history of the Federal and state adjudications on the subject of the effect of discharges under state insolvent laws, examined by DILLON, C. J. *Id.*

12. An express promise by a debtor, after his discharge under the insolvent laws, to pay a prior debt, waives the discharge. *Knight v. House*, 695.

III. *Tender and Payment.*

13. A creditor's agreement to receive the note of a third person, in payment of his claim, with actual transfer, extinguishes the claim. *Roberts v. Fisher*, 638.

14. A debtor has the right in the first instance to make the appropriation of payment. *Neidig, Adm. of Neidig, v. Whiteford*, 695.

DECEDENT'S ESTATE. See EXECUTOR AND ADMINISTRATOR, 6.

1. A creditor of a decedent cannot be prejudiced by the failure of the commissioners of the Probate Court to present his claim for allowance. *Dickey v. Cortiss*, 504.

2. Probate Court has no jurisdiction over trustee appointed by will. *Hayes v. Hayes*, 575.

DEED. See CORPORATION, 5; TRUST AND TRUSTEE, 1.

1. A deed altered by consent of the parties and redelivered by them is good. *Bassett v. Bassett*, 183.

2. The omission to read a deed to an illiterate marksman renders the acknowledgement of no value. *Suffern v. Butler*, 183.

3. Conveying premises, "subject to a mortgage executed by the parties of the first part in the year 1856," sufficiently describes the mortgage. *Johnson v. Zink*, 439.

DITCH. See WATERS AND WATERCOURSES, 2-3.

DIVIDEND. See CORPORATION, 6; TENANT FOR LIFE, 2.

DIVORCE. See HUSBAND AND WIFE, I.

DOLLARS. See CONTRACT, 6-7.

DOWER. See HUSBAND AND WIFE, II.

EASEMENT.

1. A minister of the Protestant Episcopal Church has either the possession of the church edifice or a right in the nature of an easement to enter therein, on all occasions set apart in the parish for divine services, and a substantial interference with such right will lay the ground for an action at law. *Lynd v. Menzies*, 94.

2. The English ecclesiastical law forms the basis of the law regulating the affairs of this denomination of Christians. *Id.*

3. In order to vest the pastor with the ordinary rights in the temporalities pertaining to his office it is not necessary for the congregation to be incorporated nor that the title to the church should be lodged in such congregation. *Id.*

EASEMENT.

4. An easement will not be extinguished by mere non-user for twenty years. *Veghte v. The Raritan Water Power Co.*, 191.

5. Twenty years adverse enjoyment of a right to flow back water upon another's land, will constitute an easement, which no interruption, except for the same period, or a plain intention to abandon, will destroy. *Carlisle v. Cooper*, 249.

ELECTION.

1. Where at an election for sheriff a majority of the votes are cast for a disqualified person, the next in vote is not to be returned as elected. *Commonwealth ex rel. McLaughlin v. Cluley*, 63.

2. Election returns should not be rejected where there is some irregularity in the appointment of the officers of the election, unless injurious results accrued therefrom. *Keller v. Chapman*, 185.

3. It is error in a county court to count votes not in fact received, even though they were improperly rejected. *Webster v. Byrnes*, 185.

EJECTMENT.

1. Parties in possession under the defendant in an action of ejectment, may be dispossessed by a writ of restitution. *Mayne v. Jones*, 120.

2. Possession accompanied by a claim of the fee, will sustain an ejectment against one showing only naked possession. *Dall v. Faiver*, 379.

3. A judgment in ejectment for plaintiff, does not preclude the defendant from asserting a title subsequently acquired. *Mann v. Rogers*, 505.

4. The right to set off the value of improvements, against a claim for damages in ejectment, depends upon their permanency. *Carpentier v. Small*, 505.

5. To maintain, must be disseisin of plaintiff, and wrongful possession by defendant. *Chamberlin v. Donahue*, 632.

6. Vendor cannot eject his own vendee who has entered by license, or under express agreement giving him possession, until the license is rescinded or the agreement broken. *Pierce v. Tuttle*, 633.

7. *Primâ facie* all who came into possession pending the action of ejectment, must go out, if the plaintiff recover. *Wetherbee v. Dunn*, 696.

ENTRY. See MORTGAGE, 1.

EQUITABLE ELECTION. See WILL, 4-5-7.

EQUITY. See TRADE-MARK, 2.

1. A creditor cannot file a bill to set aside a transfer of property fraudulently made by his debtor, until he has a judgment or execution, such as would give a lien on that property if not transferred. *Green v. Tantum*, 120.

2. A complainant cannot dismiss his own bill as to part of the relief prayed, and proceed with the residue; he must apply to amend. *The Camden and Amboy Railroad Co. v. Stewart*, 121.

3. A court of equity will not relieve against a conveyance made to prevent the grantor's property from being sacrificed and his creditors from recovering their money. *Eyre v. Eyre*, 121.

4. In a suit to set aside a conveyance to a trustee to hold in trust for one person for her life, and at her death to such of her children as she may appoint, such children as the *cestui que trust* may have are not necessary parties; their interest is too uncertain and contingent. *Booraem v. Wells*, 121.

5. An injunction will be dissolved upon the answer only when it denies explicitly the facts upon which the equity of the bill is founded. *Teasey v. Baker*, 122.

6. Injunction will issue to prevent the cutting down of fruit trees, shade trees, or ornamental shrubbery, by tenant for life. *Tainter v. Mayor of Morristown*, 127.

7. A bill in the nature of a bill *quia timet*, will not lie by heirs at law in anticipation of the trusts under a will becoming incapable of execution. *Girard v. Philadelphia*, 245.

EQUITY.

8. Every intendment will be made to support a sale made under the decree of a court of equity, unless the price is so grossly inadequate, as to injure parties not in default. *Farmers' Bank of Maryland v. Clarke*, 250.

9. A bill, charging that a creditor cannot obtain a settlement of his claim twelve months after an assignment, is not demurrable. *Dobbins v. Porter*, 309.

10. Will not set aside an agreement intended to defraud third parties, as between the parties themselves. *Sweet v. Tinslar*, 438.

11. Will relieve against contracts made in mutual mistake. *Watts v. Cummins*, 696.

12. When a party asks a chancellor to restrain the inequitable use of a legal title, he must show such facts as entitle him to rescind on the ground of either mistake or fraud. *Id.*

13. If defendant in chancery suit is sought to be made a party in his own right and as executor, bill should state the fact, and pray process against him in both characters. *Carter v. Ingraham*, 697.

14. An action for the specific performance of a trust by the execution of a deed, may be maintained without a demand of the deed. *Jones v. City of Petaluma*, 697.

ERRORS AND APPEALS. See COURTS, 11; TAXATION, 5.

An appeal or writ of error which does not bring to the Supreme Court a transcript of the record before the expiration of the term to which it is returnable, is no longer a valid appeal or writ. *Edmonson v. Bloomshire*, 255.

ESTOPPEL.

1. A party claiming an estoppel must show that he has relied on some act or incurred some liability, which would make it a fraud upon him to have the truth shown. *Genlinghouse v. Whitwell*, 60.

2. The plaintiff in an action for malicious prosecution, is not estopped from showing want of probable cause, because he paid part of the sum claimed in the original cause. *Morton v. Young*, 187.

3. A judgment, to operate as an estoppel, must be upon the same subject-matter and between the same parties. *McKenzie v. B. and O. Railroad Co.*, 251.

4. Is never to be applied, except where to allow the truth to be told would consummate a wrong. *Franklin v. Merida*, 506.

5. The owner of goods representing them as belonging to another, is estopped on an attachment from showing that the representation was false. *Horn v. Cole*, 570.

6. A woman will be estopped from claiming dower, in land she encouraged another to purchase, by stating she had no claim thereon. *Malony v. Horan*, 571.

7. Whenever an act is done or a statement made by a party which cannot be contradicted or contravened without fraud on his part and injury to others whose conduct has been influenced by the act or admission, the character of an estoppel will attach to what would otherwise be mere evidence. *The State v. Pepper*, 665.

8. A surety signing and delivering to the principal obligor for delivery to the obligee a bond, before the names of the sureties have been inserted in the body of the instrument, will be held as agreeing that the blank for such names may be filled after he has executed it. *Id.*

9. A surety signed a sheriff's official bond after the signatures of other sureties, without reading it, or hearing it read, or asking what it was, on being told by the principal that it was a county paper and requested by him to sign it. *Held*, that such surety was not released by the fact that one of the signatures before his was forged. *Id.*

10. The judgment of a court of competent jurisdiction, is an estoppel as to all matters put in issue by the pleadings. *Jackson v. Lodge*, 697.

11. One led by silence ignorantly and innocently to rest on his title, believing it secure, and to expend money and make improvements, without timely warning, will be protected by estoppel. *Chapman v. Chapman*, 756.

EVIDENCE. See CORPORATION, 6 ; CRIMINAL LAW, 1 ; FRAUD, 2 ; TRESPASS, 8-9 ; WITNESS, 7.

1. If the presiding judge is satisfied, upon inspection, of the genuineness of a signature to an instrument, it is sufficient *primâ facie*, without other proof. *Brown v. Lincoln*, 61.

2. Corporation books do not prove themselves : proof of their true character must be given to authorize their reception in evidence. *Coal Co. v. Foster*, 368.

3. At the time of offering evidence some competent purpose should be stated as the ground for its reception, if it be not obviously competent on its face. *Id.*

4. Of similar accidents, is not admissible in an action against an overseer of highways, for an injury resulting from breaks in the road. *Sherman v. Kortright*, 382.

5. The proper time to object to the introduction of testimony for incompetency is when such testimony is offered in evidence at the trial. *Sweeny v. Mathews*, 440.

6. Evidence that a person charged with larceny had previously attempted to purchase a chattel similar to that stolen, has no tendency to disprove theft, and is not admissible for that purpose. *Foster v. People*, 494.

7. The declaration of a deceased person as to boundaries, though made off the land, is admissible in evidence. *Towers v. Silsby*, 502.

8. The slightest circumstances tending to show malice are admissible, where punitive damages are claimed. *Lyon v. Hancock*, 503.

9. County recorders' books, admissible in evidence to prove the claim of a miner. *Pralus v. Pacific Mining Co.*, 508.

10. The official character of persons acting as mustering officers, is *primâ facie* to be assumed. *Chapman Township v. Herrold*, 633.

11. Certificates from the War Department of the mustering in of recruits are in no sense records importing absolute verity. *Id.*

12. The opinion of an expert must be predicated on facts proved or admitted, or such as appear in evidence hypothetically stated. *Rouck v. Zehring*, 697.

13. Declarations of an obligor shortly after the execution of a note, that he had not signed it are admissible, not as evidence that he had not signed, but to show want of memory and understanding about what he had done. *Id.*

14. Receipts, when mere acknowledgments of delivery or payment, are but *primâ facie* evidence of the facts, and not conclusive: the facts may be contradicted by oral testimony. *Baldorf v. Albert*, 697.

15. Of a general and well known usage among the banks of a city is admissible in an action against one of the banks. *Chesapeake Bank v. Swain*, 754

EXECUTION. See PARTNERSHIP, 6-9 ; SET-OFF, 3 ; TRUST AND TRUSTEE, 2.

1. An attachment or levy on the property of a debtor unlawfully arrested, is void. *Clossom v. Morrison*, 60.

2. Money or other articles of value with which a prisoner might obtain the means of effecting his escape, are subject to levy or attachment. *Id.*

3. It is a question in such cases for the jury, whether the officer making the arrest acted in good faith or not. *Id.*

4. A lace shawl is wearing apparel and exempt from execution, but rings and jewelry are liable for debt. *Frazier and Wife v. Barnum*, 248.

5. In an action against a sheriff for a false return of *nulla bona*, he will not be liable unless the goods pointed out to him really belonged to the defendant, and he has the right to demand that the sureties in the indemnity bond reside in his county. *Commonwealth ex rel. Hood v. Vandyke*, 317.

6. *Primâ facie* all property is liable to execution, a claim of exemption will not therefore avail an officer sued for neglect of duty in not levying. *Baker v. Brintnall*, 380.

7. Levy upon property supposed to belong to the maker of a note, is no satisfaction of the judgment, and no defence to an action against the endorsee. *Rice v. Groff*, 634.

EXECUTORS AND ADMINISTRATORS. See **WILL**, 1; **WITNESS**, 8;

1. The public administrator of the city of San Francisco only acts by virtue of a special grant from the Probate Court for each particular estate. *Matter of the estate of Hamilton*, 126.
2. While one administrator is in office, the probate judge or court cannot appoint a new one. *Id.*
3. An executor has no power to sell the lands of his testator, unless directed to do so by the will, either expressly or by implication. *Lippincott's Executor v. Lippincott*, 127.
4. The capacity of an administrator to sue in *assumpsit* can only be raised by a plea in abatement. *Brown's Adm. v. Nourse*, 185.
5. Where an executor is also trustee, he may be superseded as such but allowed to continue as executor. *Leddel's Executor v. Starr*, 185.
6. If a suit is prematurely brought the executor must plead the fact in abatement and not in bar. *Amoskeag Manufacturing Co. v. Barnes*, 440.
7. May charge decedent's estate for suitable headstones for grave, where there are sufficient assets. *Ferrier v. Myrick*, 635.
8. An executor is not liable *de bonis propriis* on an oral promise to pay a legacy. *Okeson's Appeal*, 698.
9. Guilty of a *devastavit* for failure to collect the debts of the estate. *Oglesby v. Howard*, 698.

FIXTURES.

1. Trade fixtures and buildings for trade, no matter how strongly attached to the soil or firmly embedded in it, are treated as personal property, and as such subject to removal by the person erecting them. *Northern Central Railway Co. v. Canton Co.*, 540.
2. The road-bed of a railway, the rails fastened to it, and the buildings at the depots are real property; but under certain circumstances they may be trade fixtures, and be treated as personal property. *Id.*
3. The ground upon which a tenant's right to remove his fixtures has been limited during the continuance of his term, rests upon the doctrine, that if he neglected to avail himself of his right within this period, the law presumed that he voluntarily relinquished his claim in favor of the landlord. This presumption cannot arise, where the term, being uncertain in its continuance, may be terminated suddenly, and without previous notice. *Id.*

FRAUD. See **PARTNERSHIP**, 8; **VENDOR AND PURCHASER**, 2-12.

1. One who participates in the fruits of a fraud, is equally liable with the party originally committing it. *Lincoln v. Claflin*, 250.
2. The declarations of each are evidence against the other, though made in their absence. *Id.*
3. Interest is not allowable as a matter of law in torts. *Id.*
4. A payment in Confederate notes, after the surrender of the Confederate armies, to one ignorant of the fact, is a fraud upon him. *Blalock v. Phillips*, 312.
5. A conveyance intended to delay a creditor even temporarily is void. *Sweet v. Tinslar*, 442.
6. Where two persons are engaged in defrauding third parties, equity will not relieve either, as against the other, from the consequences of his misconduct. *Stewart v. Ackley*, 442.

FRAUDS, STATUTE OF.

1. Part performance will take a contract out of the Statute of Frauds, when it has been in part performed in such manner that a refusal would be a fraud on the other party. *Eyre v. Eyre*, 119.
2. Where a verbal contract is to be performed within a year by one party, but not by the other, the question whether the Statute of Frauds applies or not depends on whether the suit is brought against the party who was to perform his part within the year. If it is so brought, the statute would not apply, but if brought against the party whose agreement was not to be performed within the year, then the statute would be a bar. *Sheehy v. Adarene*, 326.

FRAUDS, STATUTE OF. See **HUSBAND AND WIFE**, 3.

1. An agreement to sell hop roots in the ground, is not within the statute as being an interest in real estate. *Webster v. Zielly*, 441.

2. A subsequent written recognition of a contract void by the Statute of Frauds is not only a ratification of it, but is a sufficient note or memorandum of the contract within the statute. *Id.*

3. Whether a contract is within the statute, depends upon whether it is essentially for the sale of goods, or for the skill and labor of a workman expended upon them. *Pitkin v. Noyes*, 572.

4. The delivery and acceptance of part of the wood the first winter, on a contract of sale of certain cords of wood, the vendor to deliver as much as he could one year, and the balance the next, will take the case out of the statute. *Gault v. Brown*, 572.

5. The authority of an agent contracting for the sale of land need not be in writing. *Pringle v. Spaulding*, 572.

6. An agreement for the sale of land, to be valid, must be binding on all the parties by whom made. *Snyder v. Neefus*, 572.

7. The owner who conveys must be bound by writing, but the other party for anything contained in the statute need not so be bound. *Johnston v. Cowan*, 755.

GOLD. See **COIN**.**GUARDIAN.**

Converting stock belonging to his ward's estate, is liable for the highest price the stock attains after conversion. *Lamb's Appeal*, 635.

GUARANTY. See **BILLS AND NOTES**, 4.

The liability of guarantor for rent in arrear can only be discharged by payment, release, or other satisfaction. *Kingsbury v. Williams*, 635.

HIGHWAY. See **CONSTITUTIONAL LAW**, 8; **EVIDENCE**, 4; **RAILROAD**, 13; **TOWN**, 2.

1. Distinction between highway laws of Vermont and Massachusetts. *Morse v. Town of Richmond*, 81.

2. Time will not legalize an encroachment upon a public highway. *Tainter v. Morristown*, 121.

3. Petition for, dismissed where the same had been personated within two years previous, and rejected. *Whitcher v. Town of Landaff*, 573.

4. Objections to form of petition for highway, must be taken before reference to county commissioners. *Wensworth v. Town of Farmington*, 573.

HUSBAND AND WIFE.**I. Marriage and Divorce.** See **ALIEN**, 2, 3.

1. Divorce on the ground of adultery will not be decreed upon the uncorroborated testimony of a *particeps criminis*, herself unchaste and untruthful. *Clare v. Clare*, 122.

2. Father not responsible for education of his child, born after decree of divorce. *Harris v. Harris*, 573.

3. Parol promise of husband, during coverture, to pay ante-nuptial debt of wife, is within the Statute of Frauds and cannot be enforced. *Cole v. Shurtleff*, 636.

4. Liability of husband for ante-nuptial debts of wife, terminates on wife's death, unless enforced during coverture. *Id.*

II. Curtesy, Dower. See **ESTOPPEL**, 6.

5. The erection of buildings by the husband on the leasehold lands of his wife will not take away her right of survivorship. *Riley's Administrator v. Riley*, 186.

6. The legal effect of wife's joining in deed of conveyance of land of husband, is to release her dower. *Maloney v. Horan*, 573.

7. A wife taking conveyance of land, in which she was entitled to dower, merges it. *Id.*

III. Separate Estate of Wife and Estate by Entireties.

8. Where A. makes a parol gift of land to B. and wife as long as they live,

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and the latter move on the land with the assistance of A., pay part of the taxes, make valuable improvements and continue to reside on it for six years, the gift will be treated in equity as in the nature of a contract executed, and A. will not be allowed to recover possession of the land during the life of B. or his wife. *Freeman v. Freeman*, 29.

9. If B. should abandon the land and either directly or by neglecting to appear and defend, connive with A. to eject the wife, the latter will nevertheless be entitled to a judgment in her favor for her own life. *Id.*

10. A husband's appropriation of money belonging to his wife's separate estate, does not make them debtor and creditor, even when done with the wife's consent. *Kuhn v. Stansfield*, 312.

11. A conveyance to husband and wife and their heirs prior to 1850, constituted in Kentucky, as at common law, an estate by entireties, which neither husband nor wife could sever or make liable for debts as against the other. *Elliot v. Nichols*, 433.

12. The statute of 1850, abolishing the right of survivorship and turning the estate into a tenancy in common, is not retrospective. *Id.*

13. The husband and wife cannot enter into a mortgage of her statutory separate estate for the purpose of subjecting it to sale for the payment of the husband's debts; and if they do, a court of chancery will not permit the mortgage to be enforced by sale of the wife's separate estate, if she objects to it. *Bibb v. Pope*, 490.

IV. Actions by and against Husband and Wife. See **SPECIFIC PERFORMANCE**, 2.

14. Since the acts of the legislature of New York of 1860, chap. 90, and of 1862, chap. 172, a married woman may bring an action in her own name against a wrong-doer, for a wrong committed upon her person, without joining her husband with her as a party. *Ball v. Bullard*, 381.

INFANT. See **PARENT AND CHILD**, 3; **REVERSION AND REMAINDER**.

1. May recover for an injury caused partly by his own imprudent act, but the father cannot. *Glassey v. Hestonville Railway Co.*, 315.

2. To a child of tender years no contributory negligence can be imputed. *North Penna. Railroad v. Mahony*, 315.

3. The contracts of infants are:—

(1). Binding—when for necessities at fair rates;

(2). Void—when manifestly and necessarily prejudicial; and

(3). Voidable, at the infants' election, either during minority or within a reasonable time after attaining majority: including all executory agreements not for necessities, and all executed contracts of this sort wherein the other party can be placed substantially *in statu quo*. *Robinson v. Weeks*, 554.

4. May recover for what he has done in execution of a voidable contract, by restoring what he received under it. *Heath v. Steevens*, 574.

INJUNCTION. See **EQUITY**, 5-6; **NUISANCE**, 2; **TRADE-MARK**, 5; **WASTE**.

INNKEEPER.

A guest is not relieved from all responsibility in respect to his goods on entering an inn. He is bound to use reasonable care and prudence in respect to their safety, so as not to expose them to unnecessary danger of loss. *Read v. Amidon*, 507.

INSOLVENT. See **BANKRUPTCY**, 1; **DEBTOR AND CREDITOR**, II.

INSURANCE. See **DAMAGES**, 7; **PARTNERSHIP**, 16.

1. The words "totally disabled from the prosecution of his usual employment," in an accident insurance policy, mean *wholly disabled from doing substantially all kinds of his accustomed labor, to some extent*. A disability that prevents his doing as much in a day's work as before is not total, but one that entirely prevents his doing certain portions of his accustomed work is total, though there are other portions that he is able to do. *Sawyer v. U. S. Casualty Co.*, 233.

2. Making brooms by hand, does not come within the prohibition "mills

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and manufactories," in a policy of insurance. *Franklin Ins. Co v. Brock*, 312.

3. A premium above the usual rate, is some evidence that a more than usual risk was assumed. *Id.* 313.

4. Each policy is a distinct contract. *Id.*

5. An "accident" within the meaning of a policy of insurance means an event which happens from some external violence or *vis major*, and which is unexpected, because it is from an unknown cause, or is an unusual result of a known cause. *Schneider v. Life Ins. Co.*, 349.

6. Negligence of the person injured does not prevent it from being an accident. *Id.*

7. Therefore in an action on a policy of insurance against accident, the negligence of the insured is no defence. *Id.*

8. A policy of insurance against accident contained a clause against liability for injury resulting from the assured "wilfully and wantonly exposing himself to any unnecessary danger." The assured attempted to get on a train of cars while in slow motion, and fell and was killed. *Held*, that the negligence was not wilful or wanton, and the company were liable. *Id.*

9. Under an agreement to insure generally, an agent should obtain full insurance if possible. *Beardesley v. Davis*, 378.

10. The assignee, of a payee who had an insurable interest, is entitled to recover for a loss. *Franklin v. National Ins. Co.*, 380.

11. A temporary insurance, effected without notice to the original insurer, but not existing at the time of the loss, will not invalidate the policy. *Obermeyer v. Globe Ins. Co.*, 380.

12. The maxim of "*causa proxima non remota spectatur*," applied in insurance cases. *Insurance Co. v. Tweed*, 442.

13. Insurance effected in the name of one of two owners of goods, upon the representation of an agent that such is correct, may be recovered in case of loss, by a suit in the name of the party to whom the policy is issued. *Manhattan Ins. Co. v. Webster*, 757.

INTEREST. See FRAUD, 3; INTERNATIONAL LAW, 10.

1. Agreement to call at obligor's office for interest on bond and mortgage, does not make the office the only legal place for payment. *McCotter v. De Groot*, 125.

2. Equity will relieve obligor against breach of condition in consequence of such agreement. *Id.*

3. Interest warrants or coupons in a negotiable form, draw interest after payment of them is unjustly neglected or refused. *Aurora v. West*, 250.

INTERNAL REVENUE.

A written protest signed by the party, is a condition precedent to the right to sue for the recovery of duties paid under the Act of February 26th 1845. *Nichols v. United States*, 255.

INTERNATIONAL LAW. See PRIZE.

1. An officer commanding troops of the United States in an insurgent state, during the late civil war, seized property of a citizen of the state, and after acquiring firm possession, sold it to a third person. After the war the owner at the time of the seizure brought an action of trover for the value of the cotton against the purchaser, in the Circuit Court of the United States. *Held*, that the Court had no jurisdiction, the seizure was made as an act of war, and its validity was not triable in a municipal court, in a common-law proceeding. *Coolidge v. Guthrie*, 22.

2. That this defence was admissible under the general issue in trover. *Id.*

3. That after complete possession of the cotton by the captor for twenty-four hours it became *booty* by the laws of war, and the title of the hostile owner was completely extinct. If the plaintiff in this case had any right it was against the United States. *Id.*

4. All species of contracts or commercial intercourse, whether direct or indirect, between subjects of different powers at war, are invalid. *Billgery v. Branch*, 334.

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5. The late contest between the United States and the Confederate States was a war. *Bilgery v. Branch*, 334.

6. The government of the Confederate States being a government *de facto* only, had jurisdiction and gave national character only to such parts of the territory of the several states as were under its actual control. *Id.*

7. While therefore the city of New Orleans was under the authority of the Confederacy, its citizens were citizens of the Confederacy and enemies of the United States; but when the city passed into the hands of the Federal forces, it became again part of the United States, and its citizens became enemies to the Confederate States. *Id.*

8. Where a citizen of Richmond drew a draft upon a citizen of New Orleans in 1862, after the capture of the latter city by the United States forces, and the payee, in February 1863, endorsed the draft to another, a citizen of Vicksburg, within the Confederate States, who held it until October 1863, and then presented it to drawee, at New Orleans, who refused payment, and the draft was then protested: *Held*, that this was an illegal act, and the holder could not recover. *Id.*

9. This is so whether the contract be held void under the general rules of international law or under the Act of Congress of July 13th 1861. *Id.*

10. Where the debtor and the creditor's known agent to receive the money, reside in the same jurisdiction, the fact that the creditor is a citizen of a power at war with the debtor's government, and resident in the hostile state, does not absolve the debtor from his obligation to pay, and if he does not, he is liable for interest. *Ward v. Smith*. 354.

11. When the United States forces, during the late war, acquired firm occupation of part of an insurrectionary state, the citizens of that part occupied were restored to their relations as citizens of the United States, and contracts between them and other citizens became valid. *Graham v. Merrill*, 477.

12. The Act of July 13th 1861, and the Proclamation of the President of August 16th 1861, authorized, 1. Unrestricted commercial intercourse between the citizens of loyal states and of those parts of insurgent states in occupation of the Federal forces; and 2. Intercourse between citizens of the loyal and insurgent states, subject to the license of the President and the regulations prescribed by the Secretary of the Treasury; and the President's order of February 28th 1862 was a general license to such intercourse. But by the President's Proclamation of March 31st 1863, the distinction was abolished, and all intercourse between the citizens of loyal and insurgent states was made subject to license by the President and the regulations of the Secretary of the Treasury. *Id.*

13. It was not necessary to the lawfulness of such intercourse that the party engaging in it should have a special license to himself by name under the President's own sign manual. The President's power to license might be delegated or might be exercised by a general proclamation, such as those of February 28th 1862 and March 31st 1863. *Id.*

14. The late rebellion was such a war as suspended the right of a citizen of Mississippi to sue on a policy of insurance in a Connecticut company. *Semmes v. Ins. Co.* 673.

15. In addition to this consequence of a state of war, the right to sue on such a policy was suspended by the Proclamation of the President, of August 16th 1861. *Id.*

16. Where a policy contained an express provision that in any action under it commenced more than a year from the time of loss, the lapse of time should be *conclusive evidence* against the validity of the claim, the period of the war must be omitted in computing the year. *Id.*

17. The condition of war existed as regards the state of Mississippi, at least from 16th August 1861, when the President, in pursuance of the Act of Congress of July 13th 1861, declared that state in insurrection. Whether the war commenced, in contemplation of law, before that date, not decided. *Id.*

18. The legal period of the termination of the war depends not on the continuance or cessation of active hostilities, but on the acts of the departments

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of the government to which political powers are intrusted. The Proclamation of the President of June 13th 1865, removing the restrictions on trade as to the states theretofore in insurrection, was a valid act of recognition by the executive department of the government of the termination of the war, and the right of plaintiff in this action, to sue, revived from that date. *Senmes v. Ins. Co.*, 673.

JOINT LIABILITY. See **PARTNERSHIP**, 13.

One who previously assents to the commission of an act is jointly liable without the one committing it. *Treat v. Reilly*, 505.

JUDGE. See **CONFEDERATE STATES**, 4.**JUDGMENT.** See **COURTS**, 16; **ESTOPPEL**, 3-10.

1. The judgment of a court of superior jurisdiction may be collaterally attacked upon the ground that the court by which it was rendered had no jurisdiction, either of the subject matter or of the person of the defendant, or both. *Hahn v. Kelly and Morse*, 122.

2. Such facts must appear affirmatively on the record. *Id.*

3. May be taken to secure future advances when such is a constituent part of the original agreement. *Neidig, Adm. of Neidig, v. Whiteford*, 695.

JUSTICE OF THE PEACE.

1. Omission by a justice to keep a docket will not render his judgment void. *Baker v. Brintnall*, 380.

2. Non-residence must be pleaded to avoid the jurisdiction of a justice. *Osborne v. Gilbert*, 381.

LANDLORD AND TENANT. See **FIXTURES**, 3; **NUISANCE**, 4.

1. Where the owner of land leased, is to receive part of the produce, instead of rent, the lessor and lessee become tenants in common of the crops. *Brown v. Lincoln*, 61.

2. A tenant's remedy against his landlord, for abandoning his first distress without cause, and levying a second, is trespass, case or trover. *Everett, Adm., v. Neff*, 251.

3. The lease of land for a term of years, with the exclusive right to bore for and collect oil, passes a corporeal interest. *Chicago Oil Co. v. United States Co.*, 314.

4. A person is not liable for the negligent act of his tenants, in throwing coal-dirt into a river, unless done by his authority or command. *Little Schuykill Nav. Co. v. Richards*, 315.

5. Where tenant agrees to pay the rent in "certain specified repairs on the house," and is expelled before the lease expires, he may recover the value of the repairs, if they exceed the rent, in assumpsit. *Smith v. Newcastle*, 443.

6. Tenant at will entitled to the manure. *Corey v. Bishop*, 443.

7. A tenant is confined to the remedies specified in his lease, and a covenant that the landlord will repair is not to be implied. *Sheets v. Selden*, 443.

8. Tenant cannot set up want of repairs, on a bill, to enjoin a writ of possession issued by landlord. *Id.*

9. An injury caused to demised premises by a storm, is to be regarded as an act of God. *Polack v. Pioche*, 501.

10. A tenant cannot dispute his landlord's title before surrendering possession. *Tewksbury v. Magraff*, 506.

11. A general covenant of the tenant to repair the demised premises is binding upon the tenant under all circumstances, even if the injury proceeds from the act of God, from the elements, or from the act of a stranger. *Polack v. Pioche*, 508.

12. Tenant not entitled to remove manure from farm, at the expiration of lease, though more there than when he came. *Hill v. De Rochemont*, 574.

LEGACY. See **WILL**, 5.

1. Where the real and personal estate of the testator have been blended in one common fund, and the personalty is insufficient to pay debts, and the words "not herein otherwise disposed of" are added to the residuary clause, legacies will be charged upon the real estate. *Dey v. Dey's Admr.*, 127.

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2. In determining whether a legacy is chargeable upon the real estate, the court will consider the circumstances of the testator, and the nature and amount of his property. *Day v. Day's Admr.*, 127.

LEGAL TENDER NOTES. See COIN, 5.

1. **LEGAL TENDER NOTES BEFORE THE SUPREME COURT**, 193.

2. A bond payable in gold and silver coin, cannot be discharged by a tender of United States notes, issued under the Act of February 25th 1862. *Bronson v. Rhodes*, 251.

3. A bond payable, "in gold or silver coin," is satisfied by a payment in legal tender notes. *Murray v. Gale*, 381.

4. United States notes are exempt from state taxation. *Bank v. Supervisors*, 443.

LIBEL. See CORPORATION, 3.**LICENSE.**

1. Where A. gave B. a parol license to cut timber on his land, and B. a like license to flow his lands by a dam : it was held that though mutual, the licenses were independent, and either party might revoke his so far as it was unexecuted. *Dodge v. McClintock*, 62.

2. A license at law creates no estate in the lands of the licensor, but will justify or excuse any act done under it. It is revocable even when given for a consideration, but not if once executed. *Veghte v. The Raritan Water Power Co.*, 191.

LIEN. See DEBTOR AND CREDITOR, 3 ; VENDOR AND PURCHASER, 7.**LIMITATIONS.** See BILLS AND NOTES, 3.

1. The rights of the mortgagor and mortgagee are reciprocal, and when one is barred by the Statute of Limitations the other is also. *Arrington v. Liscom*, 123.

2. A party who has been in the exclusive adverse possession of lands for a period of time which, under the Statute of Limitations, vests him with a title thereto, may maintain an action against a party claiming under a record title, to have said adverse claim determined and adjudged null and void as against him. *Id.*

3. The Statute of Limitations is no bar to an action in this state (Maine) on a note made in another state, when the defendant has not resided here. *Brown v. Nourse*, 187.

4. A special statute enacting that demands against a bank must be presented within two years is legal. *Stevens v. St. Louis National Bank*, 381.

5. A petition that shows upon its face that the cause of action is barred by the Statute of Limitations, does not state facts sufficient to constitute a cause of action. *Zane v. Zane*, 444.

6. Will not run, between the death of the party and appointment of an administrator in another state, as to claims prosecuted there. *Hicks v. Clark*, 504.

7. The Maryland Code of Public Laws does not prevent a new promise to pay, made on Sunday, from removing the bar of the Statute of Limitations. *Thomas v. Hunter*, 699.

LIS PENDENS. See COURTS, 13.

1. Unless the parties to the actions are the same, a stay of proceedings will not be granted on the ground of lis pendens. *People v. Northern Railroad*, 638.

2. The plea of, must show that the same title, the same injury, and the same subject-matter are in controversy, in an action to recover land. *Larco v. Clements*, 699.

MANDAMUS.

1. A return to a mandamus should be sufficiently clear and full to enable the court to judge if the facts set forth, are all that are necessary. *Benbou v. Iowa City*, 252.

MANDAMUS.

2. Membership of a club which is purely literary or social or scientific, and does not own property, cannot be considered a right of property; nor is the right of meeting the other members a vested right of which courts can take cognisance. *Mandamus* is not the proper form of remedy for a member of such a club who is expelled. *Waring v. Medical Society*, 533.

MARRIAGE. See **HUSBAND AND WIFE**, I.**MASTER AND SERVANT.** See **NEGLIGENCE**, 4-6; **RAILROAD**, 6-19.

1. A laborer who leaves his employer, before his time of service has expired, can recover only *pro rata* on the basis of the contract price. *Patnote v. Sanders*, 508.

2. In the absence of an express agreement ten hours work will be considered a day's labor. *Brooks v. Cotton*, 570.

3. A master is liable to other servants in the same employment, if they are injured by any neglect of duty on his part. *O'Donnell v. Alleghany R. R.*, 757.

MATERIAL MEN AND THEIR LIENS.

1. Materials furnished on the credit of a building, are a sufficient consideration for the owner's subsequent promise to pay. *Landis v. Royer*, 694.

2. Repairs and alterations which do not change the exterior of a building into a new structure, confer no lien. *Miller v. Hershey*, 699.

MILITARY SERVICE. See **EVIDENCE**, 10.**MORTGAGE.** See **ATTACHMENT**, 1; **DEBTOR AND CREDITOR**, 1-2; **DEED**, 3; **HUSBAND AND WIFE**, 12; **LIMITATIONS**, 1; **VENDOR AND PURCHASER**, 1-5.

1. An entry by a mortgagee, in the name of the whole, upon one of several lots of wild land, conveyed by the same mortgage, and in the same county, would give him constructive legal possession of all. *Green v. Pettingill et al.* 64.

2. That a deed absolute on its face was really given as security for a debt and intended only as a mortgage, may be shown by parol proof. *Hogan v. Jacques*, 120.

3. A mortgage on a canal boat, or a copy thereof, by a statute of New York is required to be filed in the office of the auditor of the canal department, and within thirty days preceding a year another copy is required to be filed, or the mortgage shall be void against creditors and subsequent *bonâ fide* mortgages and purchasers. *Herrick v. King and Others*, 124.

4. A tenant for years who offers to pay off a mortgage-debt has the right to redeem, and to have the mortgage delivered to him uncanceled. *Hamilton v. Dobbs*, 187.

5. The date of a mortgage is the day of its delivery. *Russell v. Carr*, 314.

6. The law will not note fractions of a day except to prevent injustice. *Id.*

7. In equity a conveyance, whatever form it may assume, will be treated as a mortgage, whenever it appears to have been taken as a security for an existing debt, or a contemporaneous loan. *Hinckley v. Wheelwright*, 590.

8. But on the other hand, parties capable of acting may make conditional contracts for sale of their property, and a vendor may make an absolute conveyance, subject to an agreement for a reconveyance, upon the repayment of the purchase-money, on or before a fixed day. *Id.*

9. Nor does the fact that parties stand in the relation of mortgagor and mortgagee prevent their dealing with each other as vendor and purchaser of the equity of redemption, if the mortgagee does not make use of his encumbrance to influence the mortgagor to part with his property at less than its value. *Id.*

10. The intention of the parties is, in such cases, what the courts seek to discover and enforce. *Id.*

11. As between grantor and grantee, where it appears that a conditional sale was a mere cloak to an irredeemable mortgage, equity will let in the grantor to redeem; but it is a matter of grave doubt, whether, under such circumstances, it will afford the grantee a remedy for the debt against the grantor. *Id.*

MORTGAGE.

12. A mortgage of future-acquired chattels is valid only when the property mortgaged may be regarded as a part of, or *accretion to*, property in actual or legal possession of the mortgagor at the time of making the mortgage. *Wilson v. Seibert*, 608.

13. A mortgage of property in which the mortgagor has no present interest, and which he must acquire, if at all, in *substitution for* or independently of any property he now has, is not valid to create any lien which equity will recognise or enforce. *Id.*

MUNICIPAL CORPORATION.

1. Neither the identity of a municipal corporation, nor its right to hold property devised to it, is destroyed by a change of its name. *Girard v. Philadelphia*, 245.

2. Is bound to keep the pavement in front of the market stalls in repair. *City of Savannah v. Cullens*, 314.

3. It is settled in Pennsylvania that the legislature may confer upon municipal corporations the power to assess the cost of local improvements upon the property benefited. *Hammett v. City of Philadelphia*, 411.

4. But such local assessments can only be imposed to pay for local improvements, clearly conferring special benefits on the properties assessed, and to the extent of those benefits. They cannot be imposed when the improvement is either expressed or appears to be for general public benefit. *Id.*

5. The paving of a street, changing a road into a street, and bringing the land fronting on it into the market as building lots, is a local improvement, with special benefits to the land fronting on it, and the cost of such paving may be assessed on the property benefited. *Id.*

6. But when a street is once opened and paved, and has thus become a part of the public highways of the city, the *repaving* of it, either with a new and different pavement, or by repairing the old one, is a part of the general duty of the corporation, and cannot be paid for by assessments on the adjoining properties. *Id.*

NEGLIGENCE. See INFANT, 2; LANDLORD AND TENANT, 4; RAILROAD, 15.

1. It is not contributory negligence on the part of a person crossing a county bridge, knowing it to be unsafe, in the absence of distinct notice to him or the public not to use it. *Humphreys v. The County of Armstrong*, 62.

2. It is the duty of county commissioners knowing a bridge to be unsafe to render it safe, or else to close it up, so as to prevent the public using it. *Id.*

3. It is not the absolute duty of a railroad company to furnish a safe engine. Its duty is to use care and diligence to furnish such an engine. *Railroad Co. v. Thomas*, 154.

4. When an injury has occurred to a servant in consequence of a defect in an engine, the burden is on the servant to show negligence in the master, and it is not shifted by the fact that an injury has resulted from a defect. *Id.*

5. Notice to the proper officers or servants of the company is notice to the company, and will render it liable unless it uses proper diligence in repairing the defect; but if it has made an effort by a competent servant to repair, it is not liable. Failure to remedy the defect does not conclusively prove negligence on the part of the workmen, and if it did, he is a fellow-servant of the plaintiff, for whose negligence the company is not liable. *Id.*

6. The occupant of a second story is liable for the negligence of his servants in allowing a hydrant to flood the story below, and damage the goods of the occupant of said story. *Gass v. Callunry*, 381.

7. Must be direct and proximate to defeat an action by the widow of the deceased. *Meyer v. People's Railway*, 381.

8. The owner of a horse who allowed him to wander on the unenclosed land of another, where he fell into a well and was killed, cannot recover damages unless he shows that the defendant was guilty of gross negligence. *Calkins v. Mathews*, 447.

9. It is negligence in a passenger, or in an employee holding the relation of a passenger, to ride in the baggage-car. *O'Donnell v. Allegheny R. R.*, 757.

NEGLIGENCE.

10. In an action whose *gravamen* is negligence, it is the duty of the plaintiff to show a case clear of contributory negligence. *Waters v. Wing*, 758.

11. Negligence is always a question for the jury, where there is any doubt as to the facts, or the inference to be drawn from them. *Penna. R. R. Co. v. Barnett*, 758.

12. It is negligence for a traveller to drive on a bridge just as a train is about to pass under it, if he has notice of its approach. *Id.*

NEW TRIAL.

Granting or refusing a new trial is always in the discretion of the court trying the cause. *Anthony v. Eddy*, 445.

NUISANCE.

1. Unless an individual citizen is *specially* injured by a public nuisance, he cannot bring a suit in his own name. *Higbee v. Camden & Amboy R. R. Co.*, 252.

2. The prosecution of a business, which renders the neighborhood uncomfortable, from smoke and noise, though not deleterious to health, will be restrained by injunction. *Ross v. Butler*, 252.

3. Continuance of, after notice to abate, renders party liable to indictment. *Vason v. City of Augusta*, 315.

4. Landlord not liable for nuisance on the premises of his tenant. *Id.*

5. Every continuance is a fresh nuisance in judgment of law, and an action for damages will lie against the continuer, without a request to abate it. *Conhocton Stone Co. v. B. & N. Y. Railroad*, 382.

6. The diversion of the waters of a navigable stream may be both a public and a private nuisance, and a person especially injured may have an action therefor. *Yolo v. City of Sacramento*, 670.

OFFICE AND OFFICER. See BOUNTY, 2; CONSTITUTIONAL LAW, 12, 13; EXECUTION, 3; INTERNATIONAL LAW, 1; SURETY, 3; TAXATION, 3; VENDOR AND PURCHASER, 22-23.

Public officers are liable in damages to all persons who may be injured through their malfeasance, omission, or neglect. *Lick v. Madden*, 701.

PARENT AND CHILD.

1. Father may maintain an action for debauching his daughter under age, though she does not live with him. *Greenwood v. Greenwood*, 316.

2. A minor having enlisted with his father's consent, is entitled to the bounty paid by the town to which he was accredited. *Baker v. Baker*, 509.

3. A minor son enlisting in the army with his father's consent, is entitled to recover from his father all the money he earned and sent home during such service. *Ayer v. Ayer*, 636.

PARTITION. See COURTS, 2.

1. Court will set aside and quash return of commissioners of partition when made on wrong principles, or where there is great and evident inequality in the division. *Hay v. Estell*, 125.

2. Parol promise by tenant in common to convey, no bar to suit for partition. *Polhemus and Wife v. Hodson*, 127.

3. A decree in partition, that such portions be allotted to the different tenants in common as they have respectively improved, is correct. *Seale v. Soto*, 509.

4. All the tenants in common should join in a partition. *Sutter v. San Francisco*, 670.

PARTNERSHIP. See SURETY, 5.

1. A partner bound to account must give a clear and distinct statement of his business, referring to particular books and the pages if necessary. *Gordon's Adm. v. Hammell*, 187.

2. A participation in the profits, to constitute a partnership, must be a general participation in the profits as such. *Hargrave v. Conroy*, 253.

3. A share of the profits as compensation for services, will not constitute

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a partnership, unless its gross inadequacy shows it to be a mere pretext to avoid responsibility. *Hargrave v. Conroy*, 253.

4. A partner with the knowledge of his copartner converted to the use of the firm money received by him as a United States deputy collector of internal revenue. *Held*, that a bond of the firm given to indemnify the sureties of the deputy collector was valid as a partnership obligation. *Whar-ton v. Clements*, 299.

5. Such bond valid as an indemnity although executed before the sureties had made good the defalcation, and although in form it was a bond for the payment of money. *Id.*

6. When partnership property is sold under separate executions against the partners individually, the proceeds represent the several interests of the partners and not that of the partnership. *Vandike's Appeal*, 316.

7. A member of a ditch company has no general authority, by virtue of such membership to bind the company by his contracts, like a member of a partnership. *McConnell v. Denver*, 505.

8. Fraud is sufficient ground to dissolve an unexpired partnership. *Cottle v. Leitch*, 509.

9. Levy on land of a partner for partnership debt, cannot be defeated by an attachment of individual creditors. *Bowker v. Smith*, 675.

10. Partner may withdraw at any time and cause technical dissolution of firm. *Slemmer's Appeal*, 637.

11. Equity will not decree dissolution and appoint a receiver unless on good grounds. *Id.*

12. The joint creditors of a partnership, have an equity to prevent the transfer and sale of the property of the firm, among the members where the same is fraudulent. *Flack v. Charon*, 670.

13. The members of a partnership are not jointly liable in an action for a fraud committed by one of the partners. *Stewart v. Levy*, 601.

14. Each partner being liable *in solido* for the firm engagements, has a right to have the firm assets applied in the first instance to the payment of the firm debts. *Manhattan Ins. Co. v. Webster*, 757.

15. The interest of a partner is only his proportion of the capital or profits after all the debts are paid. *Id.*

16. A partner has an insurable interest in the entire stock, and on the receipt for a loss of insurance he must account to the firm. *Id.*

PATENT.

1. For chemical substances should state the component parts with clearness and precision. *Tyler v. City of Boston*, 253.

2. OUR PATENT SYSTEM, 321.

3. Where the question is on the validity of a patent the jurisdiction of the United States courts is exclusive. *H. T. Slemmer's Appeal*, 637.

4. In a joint invention, each party should invent or discover something essential to the whole result. *Id.*

5. A joint patent taken out on the sole invention of one, or a sole patent on an invention of more than one, is void. *Id.*

PAYMENT. See AGENT, 6 ; DEBTOR AND CREDITOR, 14.

1. The doctrine that bank bills are a good tender unless objected to at the time, only applies to current bills which are redeemed at the counter of the bank, and pass at par value in business transactions in the place where offered. *Ward v. Smith*, 354.

2. Payment of a check in the bills of a suspended bank, not known to the parties to be suspended, is not a satisfaction. *Id.*

PHOTOGRAPHS.

THE LEGAL RELATIONS OF PHOTOGRAPHS, 1.

PLATFORM. See RAILROAD, 13-14-15.**PLEADING.** See EXECUTOR AND ADMINISTRATOR, 3-5 ; LIS PENDENS, 2.

1. After a verdict for plaintiff, judgment will not be arrested because the declaration alleges that the "*Inhabitants of a town*" were bound to keep a

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highway in repair, instead of alleging that the *town* was so bound. *Flanders v. Stewartson*, 61.

2. A reversal in a court of last resort, *remanding a case*, cannot be set up as a bar to a judgment in an inferior court on the same case. *Aurora City v. West*, 254.

3. The rule that judgment will be given against the party who commits the first fault in pleading does not apply to faults of mere form. *Id.*

4. A cause of action for false imprisonment may be joined with a cause of action for slander, when both arise out of the same transaction. *Harris v. Avery*, 437.

5. In declaring upon a special contract the entire consideration must be set forth, and must be proved as alleged. *Smith v. Webster*, 445.

6. Where the cause of action in the declaration is single and indivisible, a plea of tender is an admission of the cause of action as laid. *Dow v. Epping*, 445.

7. In an action by assignee of a *chose in action* not negotiable against the maker, it is unnecessary to aver in the declaration the consideration of the transfer. *Smiley v. Stevens*, 648.

PRACTICE. See HIGHWAY, 3-4.

1. In New Hampshire any one who has rights involved may be admitted to prosecute or defend an action. *Parsons v. Eureka Powder Works*, 446.

2. There can be no judgment against a trustee in an attachment suit of real estate, unless there is first a judgment against the principal defendant, and where there is a want of service upon him, the action will be dismissed on trustee's motion. *Washburn v. Mining Co. and Allen Trustee*, 634.

3. An instrument in writing agreeing to pay \$150 every month for the privilege of taking clay from certain land, is an instrument for the payment of money within the Affidavit of Defence Law. *Johnston v. Cowan*, 755.

4. Filing the agreement is a copy of the claim, and no more could be recovered than was due on it. *Id.*

PRIZE.

The *bonâ fide* purchase by a neutral, of a vessel of a belligerent, even though the same is dismantled, will not protect it from recapture by the other belligerent: *The Georgia*, 250.

PROFESSIONAL ETHICS.

THE CASE OF MR. BRADLEY AND THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, 129, 305.

PROMISSORY NOTE. See BILLS AND NOTES.

QUO WARRANTO.

1. Is not a writ of right. *Com. ex rel. McLaughlin v. Cluley*, 62.

2. The enactment that writs of *quo warranto* may be issued on the suggestion of any person desiring to prosecute the same, means any person having an interest to be affected. *Id.*

RAILROAD. See AGENT, 7; COMMON CARRIER, 6, 7; DEBTOR AND CREDITOR, 4; NEGLIGENCE, 3.

1. A charter granted by two states to a company to construct a railroad is not only a contract with the company, but a compact between the states. *The Cleveland and Pittsburgh Railroad Co. v. Speer*, 63.

2. Connecting lines of railroad may lawfully agree to divide the fares unequally. *Sussex Railroad v. Morris and Essex*, 126.

3. A contract between railroad companies using the same gauge, to transport passengers and freight continuously over both lines, does not imply a contract on the part of either company that it will not change the gauge of its road. *Id.*

4. If a passenger is ready and willing to pay his fare when demanded, a railroad company is bound to carry him, if there is room in the cars. *Farbell v. Central Pacific Railroad Co.*, 187.

5. A railroad company in its character of master is responsible to its

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employees for the proper construction of its road, its adjuncts and equipments, and the selection of competent and skilful subordinates to supervise, inspect, repair, regulate, and control its operations. If it fails in any of its duties in these respects, and its servant thereby sustains injury, he may recover. *Warner v. Erie Railway Co.*, 209.

6. If, however, these obligations are once performed, and its structures are properly made, and it employs from time to time competent and trustworthy agents to examine and test the continued sufficiency of such structures, and these tests are applied with the frequency and in the manner which time and experience have sanctioned, no action will lie though its structures turn out to be insufficient and the servant in consequence is injured. *Id.*

7. Where, under such circumstances, a bridge belonging to the company fell while the plaintiff in the course of his employment was passing over it upon a train, *Held*, in the absence of notice of its insufficiency, that it was error to leave the question of negligence to the jury. *Id.*

8. A through ticket over three several distinct lines of passenger transportation, issued in the form of three tickets on one piece of paper, and recognised by the proprietors of each line, is to be regarded as a distinct ticket for each line. *Knight v. Railroad Co.*, 654.

9. The rights of a passenger purchasing such a ticket, and the liabilities of the proprietors of the several lines recognising its validity, are the same as if the purchase had been made at the ticket office of the respective lines. *Id.*

10. Common carriers of passengers are not bound to insure the absolute safety of their passengers; but they are required to exercise the strictest care consistent with the reasonable performance of their contract of transportation. *Id.*

11. To render them liable for an injury to a passenger while under their charge, it is enough if it was caused solely by any negligence on their part, however slight, if, by the exercise of the strictest care and precaution, reasonably within their power, the injury would not have been sustained. *Id.*

12. Where a railroad company make a wharf subsidiary and necessary to the proper use and enjoyment of their road, *it was held*, in an action to recover for an injury on the wharf,

(1.) That the defendants are bound to exercise the same degree of care, in making the wharf safe and convenient for their through passengers to travel over, as is required of common carriers of passengers, although they required them to disembark at their depot, forty rods distant from the steamboat; and,

(2.) That this liability continued until, in the ordinary course of their passage over the wharf, they reached the point where the liability of the steamboat company commenced. *Id.*

13. The platform of a railroad company at a station is in no sense a public highway. There is no dedication to public use as such. *Gillis v. Railroad Co.*, 729.

14. The platform is for the accommodation of passengers, and being unenclosed, persons have the privilege but have not the legal right of walking over it for other purposes. *Id.*

15. The owner of property is not liable to a trespasser or to one who is on it by mere permission or sufferance, for negligence of himself or servants, or for that which would be a nuisance in a public street or common. *Id.*

16. To persons who come on to a platform to meet or part with passengers, or who stand in such relation to the company as requires care, the company is bound to have the structure strong enough to bear all who could stand upon it. *Id.*

17. The owner is bound to have the approach to his house sufficient for all visitors on business or otherwise, but if a crowd gathers on it to witness a passing parade, &c., and it breaks down, though not sufficient for its ordinary use, he is not liable to one of the crowd who might be injured. *Id.*

18. Is bound to furnish a safe and sufficient roadway to its servants as well as others travelling over it. *O'Donnell v. Allegheny R. R.*, 757.

19. A carpenter working for a company, is not to be esteemed as employed

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in the same general service with the hands running the trains, so as to relieve the company from responsibility for injury to him from their negligence. *O'Donnell v. Allegheny Railroad*, 757.

20. A railroad company is liable for an injury resulting from an act, lawful in itself, but negligently performed. *Pennsylvania R. R. Co. v. Barnett*, 758.

RECEIPT. See **EVIDENCE**, 14 ; **STAMPS**, 1.

RECEIVER. See **PARTNERSHIP**, 11.

A receiver will only be appointed on bill filed for that purpose, and not against a complainant upon defendant's application. *Leddel v. Starr*, 185.

RECORDS.

The records in public offices in other states, may be proved by a sworn copy, or certificate according to the Act of Congress. *Condit v. Blackwell*, 188.

RELEASE. See **TRESPASS**, 2.

REPLEVIN.

1. The right to the possession, is all that is necessary to maintain replevin. *Sprague v. Clark*, 510.

2. Title to property in replevin not changed, by issuing writ and giving bond. *Keyser v. Stien*, 576.

3. Surety in replevin-bond who takes possession of property, has no better rights than plaintiff in the suit. *Id.*

REVERSION AND REMAINDER. See **TENANT FOR LIFE**, 2.

The estate in remainder of an infant will not be sold when the benefit is doubtful. *In the matter of Sale of Lands of Steele*, 126.

RIPARIAN OWNER.

1. The common law rule of riparian ownership applies to the survey and sale of public land (under an act of Congress), where the land borders on a stream not navigable, but on navigable streams the title of the owner stops at the stream, and does not come to the *medium filum*. *Railroad Co. v. Shurmeir*, 254.

2. Slow accretions to the bank of a river become the property of the land-owner on whose side they occur. *Gerrish v. Clough*, 446.

SALE. See **CONFEDERATE STATES**, 1 ; **VENDOR AND PURCHASER**, 22 ; **WILL**, 1.

SET-OFF. See **BANK**, 2 ; **EJECTMENT**, 4.

1. A purchaser buying goods from a broker which are not in his possession cannot set off a claim against the broker in a suit for the purchase-money. *Dunn v. Wright*, 59.

2. A debt not in judgment cannot be set off to a judgment. *Thorp v. Wegefarth*, 62.

3. There is no right to tender a chose in action against the creditor in payment of a judgment or execution. *Id.*

SHERIFF. See **ELECTION**, 1 ; **EXECUTION**, 5.

SPECIFIC PERFORMANCE. See **EQUITY**, 14.

1. A delay of fifteen years is a strong ground for refusing a decree of specific performance. *Eyre v. Eyre*, 119.

2. No decree can be made in a suit by husband and wife for specific performance, where the wife dies, and her children have not been made complainants. *Hand v. Jacobus*, 122.

STAMPS.

1. The receipt of an express company for goods delivered to them is not subject to a stamp. *Belger v. Dinsmore*, 188.

2. An internal revenue stamp is no part of a note. *Hallock v. Jaudin*, 188.

3. A letter stating that a note will be paid by a creditor, does not require a stamp. *Boyd v. Hood*, 317.

STAMPS.

4. The accidental omission to stamp a note, at the time it is made, will not invalidate it. *Green v. Lowry*, 317.

5. A judgment on an unstamped bond is not void. *Ritter v. Brendlinger*, 638.

6. A promissory note made since the 30th day of June 1864 cannot be stamped in open court, and then read to the jury. *Wigham v. Pickett*, 701.

STEAMBOAT. See COMMON CARRIER, 2.

STOCK. See GUARDIAN ; TRUST AND TRUSTEE, 4-7.

1. The signing of a certificate, that certain parties have agreed to form a bank, with the number of shares affixed to the several signatures, renders the subscribers liable to the bank as stockholders. *Cole, Receiver v. Ryan*, 379.

2. A transfer of stock *bond fide*, renders the transferee liable for the amount unpaid. *Id.*

STREAM. See NUISANCE, 6 ; RIPARIAN OWNER, 1-2.

STREET. See MUNICIPAL CORPORATION, 5-6.

SUBROGATION.

1. Subrogation is purely an equitable result, and depends on facts to develop its necessity, that justice may be done. *Mosier's Appeal*, 63.

2. Subrogation is applicable wherever a payment is made under a legitimate and fair effort to protect the ascertained interests of the party paying, and where intervening rights are not legally jeopardized or defeated. *Id.*

SURETY. See ESTOPPEL, 9 ; REPLEVIN, 3.

1. Mere forbearance by a creditor to the principal debtor, however prejudicial it may be to the surety, will not have the effect of discharging him from his liability. *Railroad v. Shaeffer*, 110.

2. The case of the sureties of a railroad officer, charged with the receipt and disbursement of money, is within the rule ; and the company is not bound to dismiss the officer as soon as any default becomes known, and to give notice to the sureties that they may take measures to secure themselves by proceedings against the principal. *Id.*

3. Where an officer of a corporation violates his duty, knowledge on the part of other officers of the corporation of the default, or even connivance in it, does not discharge the sureties. *Id.*

4. Two or more persons severally signing a promissory note as sureties do not thereby incur a joint liability. *Bunker v. Tufts*, 188.

5. Several sureties paying the debt of their principal is no evidence of a partnership between them. *Id.*

TAXATION. See COIN, 2 ; LEGAL TENDER NOTES, 4 ; VENDOR AND PURCHASER, 14.

1. An assessment of a tax in St. Louis, against a lot, is not vitiated by an error in respect to the ownership thereof. *City of St. Louis v. De Noud*, 383.

2. The income tax of 2 per cent. under the Act of February 1865, is not in violation of the Constitution. *Glasgow v. Rowse*, 383.

3. A tax collector has no right to take money to pay taxes from a drawer in a bank, without the consent of the officers. *National Bank of Sandy Hill v. Fancher*, 384.

4. Certificates of indebtedness issued by the United States for supplies furnished to carry on the war, are exempt from state taxation. *The Banks v. The Mayor*, 447.

5. A writ of error lies from the Supreme Court of the United States, to the decision of a state court against a right, privilege, or immunity claimed under the Constitution. *Id.*

6. A town summoned as trustee cannot apply tax due by the defendant *cestui que trust*, to the payment of a debt which the town owes said defendant. *Johnson v. Howard*, 638.

TELEGRAPH. See BROKER, 4.

TENANT IN COMMON. See **LANDLORD AND TENANT**, 1; **PARTITION**, 2-4.

A conveyance by any number of tenants in common, less than the whole, though not void, cannot be made to prejudice the tenants not joining in the deed. *Gates v. Salmon*, 510.

TENANT FOR LIFE. See **EQUITY**, 6.

1. Tenant for life is bound to repair the ordinary wear and tear to the premises. *In the Matter of Lands of Mary E. Stull*, 127.

2. The accumulated surplus or undivided earnings of an incorporated company are part of its capital, and as such belong to the remainder-man; but an extra dividend declared out of the earnings belongs to the life tenant. *Van Doren v. Van Doren's Trustee*, 189.

TENANT FOR YEARS. See **MORTGAGE**, 4.

TENDER. See **PAYMENT**, 1; **SET-OFF**, 3.

TIMBER. See **TRESPASS**, 4; **WASTE**.

TOWN. See **ASSUMPSIT**, 4; **BOUNTY**, 1; **INTERNATIONAL LAW**, 2; **TAXATION**, 6.

1. Towns owe a statutory duty to travellers, for the breach of which the party injured may maintain an action, to remove from the margins of their highways objects unlawfully deposited there, which, by their frightful appearance, make it unsafe to travel the road with ordinary horses. *Morse v. Town of Richmond*, 81.

2. The duty of the town to remove the obstruction from the highway does not attach until they know of it, or ought to know of it, nor while it is upon the highway a reasonable time for the purposes of transportation over it. *Id.*

3. Though a town is not bound to work the whole width of the road where the travel does not require it, yet they have a right to control the whole width and have a corresponding duty. If they suffer objects to remain deposited on the margin which, by their frightful appearance, make the whole road unsafe, they will be liable for such accidents by fright as are the natural result of their neglect. *Id.*

4. Towns are held to a higher responsibility with reference to removing deposits of private property which are placed on the road without right and obstruct public travel by their frightful appearance, than with reference to removing equally dangerous objects which either are incident to the nature of the soil and country, or are thrown upon the margin in process of constructing the road. *Id.*

5. The selectmen of a town may appoint an agent to build or repair roads or bridges. *Dow v. Epping*, 445.

TRADE. See **CONTRACT**, 5; **FIXTURES**, 1.

TRADE-MARK.

1. A trade-mark having upon it a false statement which did not, and could not produce any effect upon the purchasers of the article, is nevertheless so tainted by the falsehood that equity refuses to protect it. *Palmer v. Harris*, 137.

2. A trade-mark for a brand of segars, manufactured in New York, had upon it, in Spanish, words, which interpreted into English, mean: "Factory of segars from the best plantations de la Vuelta Abajo, calle del Agua, Habana." Equity refused, on the ground of the falsehood, to enjoin a printer from counterfeiting the device, and supplying the trade with his imitations. *Id.*

3. The complainant having first appropriated and applied the name of "Charter Oak" to a certain pattern of stoves manufactured and sold by him, will be protected by injunction in the exclusive use of the name as a trade-mark. *Filley v. Fassett*, 402.

4. Any contrivance, design, device, name, or symbol, which points out the true source and origin of the goods to which it is applied, or which designates the dealer's place of business, may be employed as a trade-mark, and the right to its exclusive use will be protected by the courts. *Id.*

5. The appropriation of any prominent, essential, or vital feature of a trade-

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mark by another, is an infringement. If the trade-mark is simulated in such manner as probably to deceive customers, the piracy may be checked by injunction. *Filley v. Fassett*, 402.

6. The statute of Missouri providing for the filing of a description of any trade-mark sought to be used, was not designed to abridge or weaken the right to any trade-mark which may be acquired in the usual way. It does not authorize the appropriation by one party of a trade-mark the title and ownership of which belongs to another. *Id.*

TRESPASS.

1. Joint trespassers may be sued together, or any of them separately, and the non-joinder of the others is no defence. *Bailey v. Berry*, 270.

2. A release to one of several joint trespassers will discharge all; but it must be a technical release, not merely a covenant not to sue, or other instrument amounting to a release by implication merely. *Id.*

3. An agreement with a portion of such joint trespassers to withdraw the suit as to them, for a certain sum of money, will not discharge the others. *Id.*

4. A wrong-doer cannot dispute the title of one in the possession of land and claiming as owner, in an action against him for cutting down and carrying away timber. *Nelson v. Mather*, 447.

5. A person resisting one specially authorized, to serve process, if cognizant of the fact, is liable in an action of trespass for an assault and battery. *Leach v. Francis*, 511.

6. The plaintiff was unlawfully seized by the defendants, carried thence three miles and confined in a room several hours, and thence to a town meeting, where he took an oath to support the Constitution of the United States, and was discharged. In the trial of an action of trespass, based upon these facts, the plaintiff claimed, (1) Actual damages resulting from his seizure and detention; (2.) Damages for the indignity thereby suffered; and (3.) Punitive damages. *Held:—*

7. That the plaintiff was entitled to recover full pecuniary indemnity for the actual corporeal injury received, and for the actual damages directly resulting therefrom, such as loss of time, expense of cure, and the like;

8. That the declarations of the plaintiff, made prior to the unlawful arrest and tending to provoke the same, not being a legal justification thereof, are inadmissible in mitigation of the actual damages; but,

9. That such declaration made on the same day, and communicated to the defendants prior to such arrest, together with all the facts and circumstances fairly and clearly connected with the arrest, indicative of the motives, provocations, and conduct of both parties, are admissible upon the question of damages claimed upon the other two grounds. *Prentiss v. Shaw et al.*, 712.

TROVER.

It is no defence to an action of trover that the property sold was government bonds payable to bearer, provided the principal was not the *bonâ fide* purchaser. *Kimball, Executor, v. Billings*, 189.

TRUST AND TRUSTEE. See DECEDENT'S ESTATE, 2; EQUITY, 4-7; PRACTICE, 2.

1. Where a deed expresses a nominal consideration never paid, no use results to the grantor. *Hogan v. Jacques*, 120.

2. A trust estate cannot be sold by execution. *Id.*

3. The title of a *bonâ fide* purchaser from one, who bought at an illegal sale of a trustee or executor, will not be set aside. *Booraem v. Wells*, 128.

4. The holder of stock as trustee has *primâ facie* no right to pledge it as security for his private debt, and one who takes it under such circumstances does so at his own peril. *Shaw v. Spencer*, 219.

6. The word "trustee" in the certificate is notice to all persons to whom the certificate may be delivered, sufficient to put the taker on inquiry as to the nature of the trust and the lawfulness of the pledge. *Id.*

6. No usage of brokers or course of business can avail against these rules of law, and therefore evidence of such usage is inadmissible. *Id.*

TRUST AND TRUSTEE.

7. Where the equitable owner of stock which has been pledged unlawfully by the trustee, has given notice of his rights to the pledgee, his mere presence and failure to object to the payment by the pledgee, of an assessment on the stock, does not stop him from the legal assertion of his title, though equity will require him to refund the amount so paid. *Shaw v. Spencer*, 219.

8. A trustee is only bound to use ordinary diligence in the preservation of the trust funds. *Campbell v. Miller*, 318.

9. Trustees cannot retire with their counsel, and prepare their answers to depositions, they must be written by the magistrate. *Morrison v. Annis*, 571.

10. One cannot be made liable as trustee, for securities which he holds as the agent of another. *Smith v. Wiley*, 634.

11. Persons who have traded with and given credit to the trustee of a married woman's separate estate, cannot, in the first instance, go into chancery to have their debts paid out of the trust estate. *Pollard et al. v. Cleveland et al.*, 702.

12. Where A. agrees with B. that he will purchase a sheriff's certificate of sale of a mining claim, and take an assignment in his own name for the joint benefit of both, and A. makes the purchase, B. furnishing his proportion of the money, and takes a sheriff's deed in his own name, a resulting trust arises, and A. holds a part of the property in trust for B. *Dikeman v. Norrie*, 702.

VENDOR AND PURCHASER. See ASSUMPSIT, 6; CONFEDERATE STATES, 1; DEBTOR AND CREDITOR, 8; EJECTMENT, 6.

I. Of Real Estate.

1. A conveyance of part of mortgaged premises "subject to the payment of all liens now on the same," does not create a personal obligation on the vendor to pay the mortgage or any part of it; but it makes the part so conveyed as against the residue subject to its proper proportion of the mortgage-debt, and to that only. *Hoy v. Bramhall*, 124.

2. A purchaser who buys land at a lower price by representing a mortgage as an encumbrance, which was not, will be compelled to make good the amount of it to the vendor. *Winans v. Winans*, 186.

3. The rule that the title of a purchaser acquired under a judicial sale will be held good, though the judgment be afterwards reversed, applies to all purchasers, whether parties to the suit or not. *Gordon v. Canal Co.*, 279.

4. By a decree of the Circuit Court, a claim was held to be a lien on an entire canal. From this decree an appeal was taken to the Supreme Court, pending which the canal was sold under the decree, and the plaintiff in the decree became the purchaser. The Supreme Court reversed the decree on the ground that the claim was a lien on a section of the canal only. Held, that plaintiff's title under the sale was not affected by the reversal. *Id.*

5. A purchaser is not entitled to the rents accruing between the time of sale and delivery of the deed, on the foreclosure of a mortgage. *Mitchell v. Bartlett*, 441.

6. Vendee will not be deemed to have assented to a contract for sale of land, which only binds one of two vendors. *Snyder v. Neefus*, 639.

7. The vendor of real estate, retains a lien for the unpaid purchase-money, even after conveyance of the legal title to the vendee. *Schwarz v. Stein*, 702.

8. The possession of land by a stranger to the record title, is sufficient notice of a claim, to put a purchaser on inquiry. *Pell v. McElroy*, 703.

II. Of Chattels.

9. An unconditional delivery of goods without payment, does not pass the title, where there has been fraudulent misrepresentation. *Hicks v. Campbell*, 190.

10. A vendor cannot demand immediate payment of the purchase-money, after an agreement to extend the time of such payment. *Cythe v. La Fontain*, 190.

11. A vendee cannot rescind a contract of sale after receiving part of the property without an offer to restore. *Woodruff v. Peterson*, 190.

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12. The doctrine of *fraud in law* as applicable to change of title in personal property without change of possession is merely a kind of rule of evidence prescribing what facts proved shall be held to conclusively show the existence of fraud, and thus creating a kind of estoppel *in pais*. *Daniels v. Nelson*, 149.

13. The rule rests upon grounds of policy only, and its application has been limited to creditors and *bonâ fide* purchasers. It does not apply in favor of a state or county levying a tax. *Id.*

14. Therefore, a chattel belonging to A. cannot be levied upon for a tax due by B., although it formerly belonged to B. and still remains in his possession. *Id.*

15. The title to articles too ponderous for actual delivery, may pass by symbolical delivery. *Thompson v. B. & O. Railroad Co.*, 318.

16. Title to property will not pass where anything remains to be done to ascertain it. *Camp v. Norton*, 319.

17. Refusal to deliver after demand, entitles the vendee to an action for non-delivery. *Id.*

18. The consummation of the sale of a chattel, is the delivery, and subsequent agreements as to time of payment do not alter it. *Blow, Adm., v. Spear*, 383.

19. Where covenants are mutual and dependent, performance or an offer to perform, on the one part, is a condition precedent to the right to insist upon performance on the other part. *Hill v. Grigsby*, 511.

20. One induced to purchase part of a vessel on a fraudulent representation of the cost price, is entitled to recover the over-payment. *Pendergast v. Reed*, 695.

21. Where the title to property is to remain in the seller, until the payment of the price upon a fixed day, such payment is a strict condition precedent, and the right of property is not vested in the purchaser. *Putnam v. Lamphier*, 701.

22. The sale of a horse belonging to the United States, by an officer of the army, to a *bonâ fide* purchaser, but without the authority or assent of the government, will not pass the title against the latter. *Johnson v. Frisbie*, 756.

23. Persons dealing with agents or officers in regard to public property, are bound to know the extent of their authority. *Id.*

VESSEL. See ADMIRALTY, 3-4-5; PRIZE; VENDOR AND PURCHASER, 20.

1. Congress has the exclusive power to provide where the evidence of title of registered and enrolled vessels shall be recorded. *Wood v. Stockwell*, 190.

2. The state legislature has no authority, directly or indirectly, to add to or dispense with the requirements of section 1 of the Act of Congress of July 29th 1850, entitled an "Act to provide for recording the conveyances of vessels." *Id.*

WAR. See INTERNATIONAL LAW, 1-14; TAXATION, 4.

WAREHOUSEMAN. See BAILMENT, 3.

WARRANTY.

Covenant to warrant and defend against all persons claiming premises, means persons having valid claims. *Gleason v. Smith*, 632.

WASTE. See WITNESS, 3.

An injunction will be granted to prevent a tenant from committing waste, by cutting timber, or an action will lie to recover damages by the remainderman. *McCay v. Wait*, 191.

WATERS AND WATERCOURSES. See DAMAGES, 3.

1. A right to divert the water of a river, is an incorporeal hereditament, and can pass only by instrument under seal. *Veghte v. The Raritan Water Power Co.*, 191.

2. A party will be liable for injury resulting from neglect to keep a ditch in repair, which passes through another's land. *Richardson v. Kier*, 192.

3. A party is bound to use as great care in managing his ditch, to avoid

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injury to another, as a prudent person would, were the property exposed his own. *Campbell v. B. R. & A. W. Co.*, 503.

4. The value of a water ditch is its capacity, and the market value of water in the vicinity. *Clark v. Willett*, 504.

WILL. See CHARITABLE USES; EXECUTOR AND ADMINISTRATOR, 2.

1. If a will direct executors to sell a certain tract after the death of a certain legatee, and contains no other power of sale, a sale in the lifetime of such legatee is void. *Booraem v. Wells*, 127.

2. A power of appointment given by will, to devise certain property among such benevolent, religious, or charitable institutions as may be deemed proper, is void, as being too vague and indefinite. *Norris v. Thompson's Ex'rs*, 245.

3. Neither age, nor sickness, nor extreme distress, nor debility of body will disqualify a person from making a will, if sufficient intelligence remain, and such person is free from unlawful influence. *Higgins v. Carlton*, 255.

4. Although a will may be ineffectual to pass land in another state, because not attested by subscribing witnesses, yet an heir at law to whom a legacy is given from the testator's Pennsylvania estate, the will being valid in this state, will be put to his election, and will not be permitted to claim the gift without giving assent to everything contained in the instrument. *Van Dyke v. Van Dyke*, 462.

5. The English rule that cases in which a legacy is given upon the express condition that the legatee shall give up his claim to real estate, are distinguishable from those in which it is clearly implied, rests upon no sufficient reason and cannot be satisfactorily explained. *Id.*

6. The doctrine of equitable election is grounded upon the ascertained intention of the testator. *Id.*

7. Equitable election rests upon the principle of compensation; and not of forfeiture, which applies only to the non-performance of an express condition. *Id.*

8. Courts of equity in Pennsylvania have jurisdiction in cases of election on the ground of trust; although the case arises under a will, and bears incidentally upon the settlement of a decedent's estate. The jurisdiction of the Orphans' Court is concurrent, but not exclusive. *Id.*

9. A copy may under certain circumstances be proved as the will of a deceased person. *Dudley v. Wardner*, 511.

10. No particular language is necessary to create a charge on land; the intention to charge is to be carried out whenever it is discoverable from anything in the instrument. *Okeson's Appeal*, 703.

11. A conveyance of land, in trust to pay the proceeds to the grantor for life, then to his wife for life, and after the death of both, to be sold, and certain specified sums to be paid to grantor's children, is not in the nature of a will and cannot be revoked. *Ritter's Appeal*, 704.

12. The following instrument: "I wish five thousand dollars to go to John C. Cole in the event of my dying intestate, and the balance of my property to go to Robert Beatie, to be disposed of by him as his judgment may dictate," if properly executed and witnessed, is testamentary in its character, and is a will. *Estate of Wood*, 704.

WITNESS. See CRIMINAL LAW, 3.

1. Objection to witness on ground of incompetency by reason of interest, must be made in time for other party to remove it if possible, or to supply the want by other testimony. *Graham v. Berryman*, 128.

2. The Act of 1864, ch. 280 Maine, allowing a person charged with crime to be called as a witness at the trial "at his own request, but not otherwise," is constitutional. *State v. Bartlett*, 184.

3. The opinion of a witness as to waste committed by a tenant for life, is not admissible in evidence. *Woodward v. Gates*, 319.

4. Not a resident of this state, is entitled to mileage for the whole distance travelled. *Ducher v. Justices of Inferior Court*, 320.

WITNESS.

5. An interested witness cannot be offered to purge himself of his interest by his own *voire dire*. *Coal Co. v. Foster*, 368.

6. The wife of a minor's next friend, is a competent witness for the administrator, who has been substituted, after suit brought by the next friend. *Taylor v. Grand Trunk R.*, 571.

7. The testimony of a physician is admissible although his knowledge is derived from study alone. *Id.*

8. Party to a suit, not allowed to testify, when adversary is executor or administrator. *Brown v. Brown*, 576.

9. The rule is not universal that a witness must state facts and not opinions. *Town of Cavendish v. Troy*, 639.

10. Death of one party to cause of action, is ground for excluding the survivor from testifying. *Hollister, Adm. of Barrows, v. Young*, 639.

11. A witness who was a lawyer being under examination was questioned touching a certain conveyance made to him by the bankrupt and wife and a subsequent conveyance by him to the wife, and refused to testify thereon as matter within the privilege of confidential communications between attorney and client. *Held*, on the facts stated the questions were proper and must be answered, and are not within such privilege. *In Re Bellis*, 747.

END OF VOL. XVII.